PLEAS
OF THE
CROWN:
OR,
A Methodical Summary of the Principal Matters relating to that Subject.

By Sir MATTHEW HALE, *Knight*, *late Chief Justice of the King's Bench.*

The Fifth Edition.

To which are now added,

Several Hundred References, never before printed, to the Ancient and Modern Books of the Law.

Also three other Treatises by the same Author; *Viz.* Of the Sheriff's Accompts, Trial of Witches, (before him) and Provisions for the Poor.

In the *SAVOY*:
Printed by J. N. Assignee of *Edw. Sayer*, Esq; for *D. Brown, J. Walthoe, M. Wotton, W. Mears, J. Brown*, and *T. Woodward*. MDCCXVI

PLEAS
OF THE
CROWN:
OR,
A Methodical Summary of the Principal Matters relating to that Subject.

By Sir MATTHEW HALE, *Knight, late Chief Justice of the King's Bench.*

In the *SAVOY*:

Printed by J. Nutt, Assignee of *Edward Sayer*, Esq; for Dan. Brown in *Exeter-Change*, J. Walthoe, in the *Middle-Temple Cloysters*, and M. Wotton at the Cross Daggers in *Fleetstreet* MDCCXVI.

7440
H182

CORNELL UNIVERSITY.
The
President White
Library
RECEIVED 1891.

THE
PREFACE.

THere was lately published an Impression such as it was, of this Book without any Name of Author to it, but yet was commonly given out to have been written by the late Chief Justice Sir Matthew Hale, *and sold for a Book of his writing. The Original indeed was written by him many Years since: But that Impression, as it seems, was from a surreptitious and very faulty Copy, and was accordingly very faulty and corrupt throughout in many respects, what by Omissions, not only of Marginal References very frequently, but of many intire Paragraphs, whereby the Book it self is in many places mutilated, as the Reader may easily observe, page* 19, 23, 48, 52, 57, 108, 110, 122, 183, 187, 200, 202, 203, 208. *of that Impression compared with*

this, besides divers other shorter, but not less material, Notes *left out in other places: What by Omissions and Mistakes of single Words, Sentences and parts of Sentences, and sometimes by an unskilful critical endeavour, to restore to some Sense, what those Mistakes had made Non-sense, whereby the Sense is in many places maimed and broken, in some much altered, and in some expressed quite contrary to the Author's words and meaning. Instances whereof the Reader may see, page* 2. *line* 17. *p.* 4. *l.* 1. *p.* 7. *l.* 6. *p.* 10. *l.* 17. *p.* 14. *l.* 6. *p.* 15. *l. penult. p.* 16. *l.* 13, *&c. the like throughout the whole Book. And what by Transposition of divers Matters misplaced among other things to which they have little or no affinity or relation, whereby they are not only wanting in their proper places, but the order and coherence of those other Matters, among which they are interposed, is interrupted and confounded: Thus one half of the Matter belonging to the Title* Process, *which should have been continued, page* 176. *is placed page* 191, 192, 193. *under the Title* Pleas, *and*

and the greatest part of the Title Principal *and* Accessary, *which should have been continued page* 196. *is there left off in the midst of a Sentence, and placed before at page* 177. *as if it was the beginning of the Title*: *And under the same Title* 4 *Paragraphs together, which belong to* Accessaries after, *and should have been continued page* 180. *where in the Original they have a Connexion with what immediately precedes and follows, are placed before at page* 179. *among what belongs to* Accessaries before. *Again the greatest part of what belongs to the Title* Clergy, *and should have been continued page* 191. *is placed page* 197, &c. *under the Title* Arraignment. *To these might be added other Faults and Mistakes, but these may suffice to shew the general corruption of that Impression.*

And though divers of these Faults and Mistakes are not to be imputed to any Negligence in the Transcriber or Publisher, (whereof, notwithstanding he cannot be acquitted in others) but partly to his unacquaintance with the Author's Hand; and partly to his

Ignorance of his way of writing, who frequently at the end of his Chapters or Sections used to leave more or less blank Paper, and when other Matter occurred, more than could be inserted in those places, did many times write the rest in some other place, where he found most room for it, and for the most part without any Note of Reference to it; so that it was very difficult for any, who was not well acquainted with his Writings, to reduce those Transpositions to their proper places; and therefore, of the many Copies, which are abroad of this Book, I could never yet see any free from divers such Mistakes: Yet by this means (to mention no other) whether through want of Skill, or of Care, or of acquaintance with the Author's Hand or way of writing, both the Author himself was much injured by the Publication in that manner, and the Reader also.

Wherefore to do some Right to the Memory of the deceased Author, and to the Publick, and more particularly in some sort (as far as in respect of some Circumstances was thought fit) to gratifie the

the Gentlemen of this honourable Profession of the Law, who possibly may take it ill to be totally deprived of the benefit of the Writings of so great a Master in it; it was thought good by a Friend of the Author's, (whose care the Author desired in the Publication of his Writings, after his Death) to furnish the Book-Sellers with a compleat Copy, corrected according to the Author's Original, only what things were therein transposed, were in the Copy reduced to their proper places according to his mind.

To this end it is fit also that the Reader be acquainted that this Book was written many Years since, about the end of the Reign of King Charles *the First, or not many Years after; was not by the Author intended for the Press, nor fitted for it; and as he saith in a Letter to one of his honorable Brethren, to whom he lent it, was then never read over by him since he wrote it, as the Reader may of himself perceive, by some Faults which had escaped him in writing, and remain uncorrected, as page 8. line 22.*

after the word Dower, *it is apparent that the word,* saved, *or some such is wanting, (which in the former Impression was endeavoured to be amended, but not without diminution of the Author's meaning) and some others, which are left to the Reader to correct according to his own Judgment, a method often approved by the most judicious Criticks in the publishing of other Mens writings, and for some special Reasons at this time thought fit to be observed in this.*

But lest while we endeavour to do Right to the Author, we should do wrong to his Book, the Reader must also know, that notwithstanding what hath been said, this Book hath been well accepted and esteemed by divers of the most eminent Lawyers, who much desired and obtained of the Author himself to have Copies of it many Years since. And though probably the Author never at all read it intirely over after he wrote it; yet it is certain he, many Years after, made divers occasional Additions to it: And, if I be not much mistaken, he did usually carry it with him in his Circuits.

He hath written a large Work upon this Subject, intituled, An Hiſtory of the Pleas of the Crown, *wherein he ſhews what the Law anciently was in theſe Matters, what Alterations have from time to time been made in it, and what it is at this Day. He wrote it on purpoſe to be Printed, finiſhed it, had it all tranſcribed for the Preſs in his Life-time, and had reviſed part of it after it was tranſcribed: But whether, or when it will be publiſhed, is uncertain. In this he doth ſummarily relate what the Law is at this time, or rather was when he wrote it; for ſome Alterations it hath ſince received, though not many, by ſome late Statutes; and therefore may not only be of uſe, 'till that be publiſhed, but may alſo continue of good uſe after that is publiſhed, whenever it be, as the moſt proper Introduction for Students to this part of the Law that is extant, and as a Synopſis or Epitome of the moſt uſeful part of that.*

A Table of the Titles and Method of the Book.

OF the kinds of Offences, page 1.
1. Immediately against God.
Heresie, 3.
Witchcraft, 6.
2. Immediately against Man.
1. Capital.
Treason
High, 9.
Petit, 23.
Felonies, 26.
by Common Law.
1. against the Life of Man.
his own,
Felo de se, 28.
Another's.
1. Involuntary.
1. per Infortunium
Chancemedley, 31.
Deodand, 33.
2. ex Necessitate.
Homicide ex Necessitate, 35.
1. *In reference to publick Justice*, 35.
2. *Upon*

2. *Upon private Intereſt*, 39.
Juſtifiable, 39.
Excuſable.
Se defendendo, 41.
2. Voluntary.
1. ex Malitia præcogitata.
Murder, 43.
2. ſine Malitia.
Manſlaughter, 56.
2 Againſt the Goods.
Larceny
1. *Simple*, 60.
2. *Mixt*, 71.
1. From the Perſon,
putting in fear,
Robbery, 71.
Without putting in fear.
75.
2. From the Houſe, 76.
To theſe may be added,
Piracy, 77.
3. Againſt the Habitation.
Burglary, 79.
Arſon, 85.
4 Againſt the Protection of Juſtice.
Breach of Priſon, 87.
but therein firſt of
Arreſt, 89.

Bail,

Bail, 96.
the Offence it ſelf,
Rumper Priſon, 107.
Eſcape
in the Party, 111.
in a Stranger, 112.
in an Officer, 113.
Reſcue, 116.
Felonies by Statute, 117.
Offences not Capital, 126.
by Common Law,
greater,
Miſpriſions, 1. Negative.
of Treaſon, 127.
of Felony, 129.
Concealment by Juries, 129.
Theft-bote, 130.
Miſpriſions Poſitive, 131.
Maihem, 133.
Offences not Capital of an inferior nature, 134.
1. *by an Officer.*
Neglect of Duty,
Bribery,
Extortion.
2. *by a common Perſon*
Breach of Peace.
1. *Affray*, 135.

 2. *Riot*,

2. *Riot*, 137.
3. *Forcible Entry*, 138.
Detainer, 139.
Restitution, 140.
4. *Barretry.*
5. *Riding armed.*
Going armed.
Deceipt and Cozenage,
Nusance.
Publick Bridges, 143.
High-ways, 144.
Inns, 146.
Ale-houses, 147.
Offences not Capital, by Statute, 151.
Forgery,
Perjury and Subornation, 151.
Champerty, Embracery, Maintenance, 151.
Ingrossing, Forestalling and Regrating, 152.
Matters of Religion, 153.
Proceedings against Offenders, 156.
1. *The Jurisdiction or Court*, 156.
The King's Bench, 156.
Gaol-Delivery, 158.
Oyer and Terminer, 161.
Justices of Assize, 164.
of Peace, 165.

Coroner,

Coroner, 170.
Sheriff, 173.
Court-Leet, 175.
Means of bringing Capital Offenders to Trial, 176.
Appeal, 179.
of Death, 181.
of Robbery, 184.
of Rape, 186.
Count in Appeal, 187.
Pleas, 189.
Approver, 192.
Indictment, 198.
Proceedings common to Appeals and Indictments.
Process, 209.
Arraignment, 212.
Principal and Accessary, 215.
Arraignment of Principal and Accessary, 221.
Demeanor of the Prisoner, 225.
Mute, 225.
Paine fort & dure, 227.
Pleas, 228.
Declinatory;
Sanctuary, 228.
Clergy, 229.

To the Felony, 243.
Demmurrer, 243.
Pleas in Abatement.
Misnosmer, 243.
in Bar. 244
Anterfoits Acquit. 244.
Convict, 247.
Pardon, 250.
General Issue, 254.
Trial
per Patriam, 255.
Process against Jury, 256.
Tales, 257.
Challenge, 259.
Evidence to the Petit Jury, 262.
Verdict, 267.
by Battel, *by Peers*, 267.
Judgment in several Cases, 268.
Falsifying of Attainders, &c. 270.
Execution and Reprieve, 272.

Notes used by the Author in his References.

C. M. Car. *Coke upon Mag. Charta.*
C. West. 1. *Coke upon W.* 1. C.
P. C. *Coke's Pleas of the Crown.*
Com. *Plowden's Commentaries.*
Cr. & Crom. *Crompton.*
Dal. *Dalton's Justice.*
Dy. *Dyer's Reports.*
Kel. *Kellewey's Reports.*
Lamb. *Lambard's Justice.*
S. P. C. *Staundforde's Pleas of the Crown.*
4 R. *Coke's 4th Report.*
9 R. *Coke's 9th Report.*

PLEAS
OF THE
CROWN.

THIS Treatiſe is divided under theſe Conſiderations;

1. Of the Kinds of Offences.

2. Of the Incidents unto theſe Offences.

The Kinds of the Offences are diſtinguiſhed according to the diverſity of the Laws by which they are introduced, *viz.*

Offences by the Common Law.

Offences by the Statute.

Offences by the Common Law, diſtinguiſh'd according to the degrees of the Offence,

{ Capital,
{ Not Capital.

Of Capital Offences, they are ſuch,

1. As are immediately againſt God.
2. Immediately againſt Man.

Thoſe that are Offences not Capital by Common Law, as Miſpriſions, Maihem, Breach of the Peace, &c.

Offences by the Stat. { Capital. / Not Capital.

The latter are many, and not here to be treated of.

Hereſie.

Heresie.

Godolphin's Repertorium Canonicum, 560 to 563, 652.
11 Co. 29. b.

1. NOw first concerning Offences Capital, that are immediately against the Divine Majesty, which are

{ Heresie,
and
Witchcraft.

1. Concerning Heresie, wherein considerable,

I. What is Heresie?

At this day all those former Acts which determined certain Points to be Heresie stand repealed; and though there be no express Act determining what shall be said Heresie, yet the Statute of 1 *El. cap.* 1. directing the High Commission, restrains it,

C. Pl. c. 5.
St. 1 E. c. 1.

1. To what formerly determined Heresie, by the Authority of the Canonical Scriptures.

2. To what adjudged so by the first four General Councils.

3. To what expresly adjudged

Hereſie by any other General Council, by Expreſs words of Canonical Scripture.

4. To what ſo determined by Parliament, by aſſent of the Convocation.

II. Who to judge of Hereſie?

1. The Temporal Judge cannot puniſh any Perſon for Hereſie by Indictment or otherwiſe:

But yet incidentally he may take knowledge whether a Tenet be Hereſie, or not: As where by force of the Statute of 2 *Hen.* 4. now repealed, *Keſar* was committed for ſaying, *That though he were Excommunicate by the Archbiſhop, he was not ſo before God:* and *Warner* committed for ſaying, *Non tenetur ſolvere decimas,* and thereupon impriſoned: In a *Habeas Corpus* by the former, and a ſpecial Juſtification in an Action brought by the latter, adjudged neither Hereſie.

M. 5. E. 4. Rot 143 coram Rege. M. 11 H. 7. R. 327. C. B.

2. All the Statutes that gave power to arreſt or impriſon for Hereſie, *viz.* 2 *H.* 4. 15. 2 *H.* 5. 7. 5 *R.* 2. *c.* 5. 1 & 2 *Ph. & Mar. c.* 6. are repealed by 1 *Eliz.*

III. The

III. The way to convict of Herefie,

I. By the Common Law.

1. By the Archbifhops and Bifhops in a general Synod.

2. By the Bifhop of the Diocefe.

2. By the Stat. 23 *H.* 8. *c.* 9.

By the Archbifhop in cafe of the affent or neglect of his Suffragan.

IV. The Punifhment of a Party convict of Herefie.

Upon Certificate of fuch Conviction, a Writ *De Hæretico Comburendo* granted, without which they cannot proceed to any temporal punifhment.

This Writ now taken away, &c. by Stat. 29 Car. 2. c. 40. Vide Repert. Can. 652.

But if after Conviction he abjure his Opinion, his life is faved.

But if he relapfe after Abjuration, then irrecoverable.

§. But by the Statute 2 *H.* 5. *c.* 7. all Statutes which introduc'd any Forfeiture ftand repealed: Neither did the Common Law inflict any Forfeiture, because the proceeding was only *pro falute animæ.*

Witchcraft.

See also his History of the Pleas of the Crown, 1, in chap. on Heresy.

C. P. c. 6.

AT Common Law Witchcraft punished with death, as Heresie, by Writ *De Hæretico Comburendo*.

The Statute of 1 *Jac.* 12. the only Law now in force against it, and divides it into two Degrees:

I. Witchcraft in the first Degree made Felony without benefit of Clergy, including four Species:

1. Invocation or Conjuration of an Evil Spirit.

2. Consult, covenant with, entertain, employ, feed, or reward any Evil Spirit to any intent, though no act be done thereupon.

3. Take up any dead Person, or any part thereof, to be employed or used in Witchcraft, Charm, &c. though not actually used or employed.

4. Exer-

4. Exercise any Witchcraft, Inchantment, Charm, or Sorcery, whereby any Person shall be killed, destroyed, consumed, or lamed in his or her Body, or any part thereof; which requires the act to be done, *viz.* laming, consuming, &c.

These and all Accessary before, to suffer as Felons without Clergy: But Accessaries may be after; but then they have Clergy, because not specially excluded.

II. Witchcraft in the second Degree.

1. To take upon them by Witchcraft, Inchantment, Charm, or Sorcery to tell where Treasure is to be found: They that take upon them to do it, though they cannot, yet within this Law.

2. Or where Goods lost or stollen may be found.

3. Or to the intent to provoke any Person to unlawful Love; these Clauses come under the word [*taking upon.*]

4. Whereby Goods or Cattel ſhall be deſtroyed; which requires an actual deſtroying, and not a bare taking upon them.

5. Or ſhall uſe Witchcraft, &c. to hurt any Perſon, though the ſame be not effected.

The Puniſhment of theſe,

1. The firſt Offence a years Impriſonment and Pillory.

2. The ſecond Offence Felony: but this requires,

1. An actual conviction and Judgment for the firſt.
2. The ſecond Offence muſt be committed after the Judgment for the firſt.

The like in Forgery, Tranſportation of Sheep, &c.

But the Conſequents upon an Attainder, *viz.* Corruption of Blood, and loſs of Dower: but during life the Lands forfeit.

And note, a Saving againſt Corruption of Blood preſerves the Deſcent; and ſaving of the Land to the Heir prevents corruption of Blood.

High-

High Treason.

COncerning Offences against Man immediately distinguished in their Judgment or Event: Capital, or not Capital.

Keeling's Reports from p. 7 to 24, & 70, 72, 76, 77.

Capital either by the Common Law or the Statutes; and these either Treason or Felonies.

Holborn's reading on Stat. 25. E. 3. & Stat. 7 W. 3. c. 3. 8 & 9 W. 3. c. 26.

Treason, either { High Treason, or Petit Treason. }

High Treason: and this though an Offence at Common Law, yet because there be some mixtures of Introductions of new Treasons by Statute, would be considered together.

1. Considering High Treason, it is distinguished into four kinds.

1. That which concerns immediately the King, or his Wife, or Children.

2. That

2. That which concerns his Officers in the Administration of Justice.

3. That which concerns his Seal.

4. That which concerns his Coin.

Before we come to the Particulars, some things to be generally premised.

1. That those that have any such disability upon them, that disables them to act reasonably, cannot commit Treason, *viz. Non compos mentis*, and Infants within the Age of discretion.

2 Co. 27. 1 And. 107. post 43. C. P. fo. 4.

And therefore if a Traytor becomes *Non compos* before Conviction, he shall not be Arraigned; if after Conviction, he shall not be executed.

An Alien Enemy, committing any hostile act, dealt with as an Enemy: an Alien Amy committing any Treason, a Traytor within the Law.

2. The Statute of 25 *E*. 3. reduced and settled all Treasons; and by that means all Treasons that were before

before are reduced, and the Stat. of 1 *Ma. c.* 1. reinforced the Statute 25 *E.* 3. and reduced all new Treasons unto the old Standard of 25 *E.* 3 and so all new Treasons declared between 25 *E.* 3. and 1 *Ma.* abrogated.

3. All Treason includes Felony; therefore if the Indictment want *proditorie*, a Pardon of all Felonies discharges it. C. Pl. 15.

Now concerning the kinds of High Treason.

1. Compassing and imagining the death of the King, Queen, or Prince, and declaring the same by some open Deed. Cro. Car. 322. & C. Pl. 14.

I. What is a Compassing the death? Post 13. & 22.

Declaring by an open act a design to depose or imprison the King, is an Overt act to manifest a compassing of His Death.

Calculating Nativity *de Roy nemy* compassing.

II. What a King?

1. A King before his Coronation, a King

a King within this Statute when the Crown deſcends upon him.

2. A King *de facto*, and not *de jure*, a King within this Act, and a Treaſon againſt him puniſhable, though the right Heir get the Crown.

3. A Titular King, that is not Regnant; as the Husband of the Queen regnant not a King within the Act. V. 1 *&* 2 *Ph. &* *Ma. c.* 10. but the Queen is.

4. The right Heir to the Crown, yet not in Poſſeſſion thereof, is not a King within the Act.

III. What the King's Wife?

It extends not to a Queen Dowager.

IV. What the eldeſt Son and Heir of the King within the Act?

The ſecond Son, after the death of the eldeſt, within the Stat.

The eldeſt Son of a Queen Regnant within the Statute.

The Collateral Heir apparent, as *Roger Mortimer* 11 *R.* 2. the Duke of *York* 39 *H.* 6. not Son and Heir within this Act.

V. What

V. What an Overt act requisite to make such compassing Treason? In Keeling, Sir H. Vane's case.

1. An Overt act must be alledged in every such Indictment, and proved.

2. Compassing by bare words is not an Overt act, as appears by many temporary Statutes against it: 26 *H.* 8. *c.* 13. 1 *El. c.* 6. 13 *El. c.* 1. 14 *El. c.* 1. *&c.* but the same set down by him in writing is an Overt act. Cro. Car. 322. acc. Sed Keeling's Reports, &c. contra.

3. Conspiring the death of the King, and providing weapons to effect it, or sending Letters to second it; assembling People to take the King into their power; Lord *Cobham*'s case: writing Letters to a Foreign Prince inciting to invasion; an Overt act. Post. 22.

4. Conspiring to levy War no Overt act unless levied, because it relates to a distinct Treason, Keeling, &c. contra.

II. Treason levying War against the King. 2 And. 4. & 66.

1. A conspiring or compassing to levy War, without a War *de facto*, no Treason; but if a War levied, the Conspirators Traytors as well Keeling's Reports con.

2 And. 4. the the case of Apprentices.

as the Actors: This appears by the Stat. 13 *El. c.* 1. that made such Conspiracy to levy War Treason during the Queen's life.

Holborn's Read. p. 11.

2. A raising a Force to burn or throw down a particular Inclosure only a Riot; but if it had been to go from Town to Town, and cast in all Inclosures, *Bradshaw's* Case; or to change Religion, or to inhance the Salaries of Labourers, a levying of War, because the End publick.

2 And. m. case.

3. Joyning with Rebels *pro timore mortis, & recesserunt quàm citò potuerunt*, no levying War. *Oldcastle's* case.

4. Holding a Fort or Castle against the King's Force a levying War.

III. Treason Adhering to the King's Enemies, giving them Aid within the Land and without.

1. What Adhering?

1. Giving Aid and Comfort to them.

2. Surrender the King's Castle for reward.

2. What an Enemy?

1. The Subject of the King becoming a Rebel, he that out of the Realm succours him, this not adhering to an Enemy within this Clause.

Note, a Rebel Subject is no Enemy. Holborn's Reading p. 14.

2. An Enemy coming hostilely into *England*, shall be dealt with as an Enemy, executed by Marshal Law, or ransomed; but a Subject assisting him shall be dealt with as a Traytor.

3. The *Scots* invading *England* in the Queen's time adjudged Enemies, though *Scotland* then in Amity. Lord *Herri's* case.

3. Within the Land or without, how that Foreign Treason shall be tried.

1. At Common Law for a Foreign Treason the Indictment and Trial must be where the Land lies.

2. By the *Stat.* 32 *H.* 8. *c.* 2. which is yet in Force it may be inquired of and tried in *B. R.* or by Commission in any County where

Dy. 298.

where the King appoints; the King's Signature may be either to the Commission or the Warrant thereof.

Treason done in *Ireland* is within that Stat. *Perrot*'s Case. *post*. 204, 205.

Dyer 360. 1 Inst. 261. Dr. Plunket's case in B. R. Tr. 33 Car. 2. & 1 And. 262. Orack's case, and cited in Calvin's case.

3. By the *Stat*. 28 *H*. 8. *c*. 15. Treason upon the Sea inquirable and triable by Commission in any County; at Civil Law it must be before Lord Admiral.

IV. Treason, Violation of

1. The King's Wife extends not to a Dowager.

§. If she consent 'tis Treason in her.

2. The Prince's Wife.

§. The same Law as before.

3. The King's eldest Daughter then living.

Thus far of Treasons that relate to the King's Person and nearest Relations, wherein generally,

1. There must be an Overt act to manifest that Offence.

2. That must be made appear by manifest proof, and not by conjectures.

3. He

3. He must be lawfully attaint thereof, either by Confession or by his Peers in his life-time.

And therefore if a Person be slain in open War, he forfeits nothing, neither can he be attaint in such case, but by Parliament.

2. Thus far of Treasons relating to the King immediately; now follows that which is Interpretative Treason.

§. Killing the Chancellor, Treasurer, Justice of one Bench or other, Justice in Eyre, or of Assize, or Oyer and Terminer in their place, doing their Offices.

1. This extends but to the Persons here named, not to the Lord Steward, Constable, or Marshal, or Lords of Parliament.

2. It extends to these only doing their Office.

3. It extends only to a killing, not a wounding without death.

But by Stat. 3 *H*. 7. *c*. 14. compassing to kill the King, or any of his Council, made Felony.

V. Keeling Reports 80.

3. Counterfeiting the Great Seal or Privy Seal.

1. It must be an actual counterfeiting: Therefore compassing to do it, no Treason.

2. Affixing the Great Seal by the Chancellor without Warrant, no Treason.

V. 12 Co. Leak's Case, & 3 Inst. Tit. High Treason.

3. Fixing a true Great Seal to another Patent is a great Misprision, but not Treason; nor a Counterfeiting within this Statute, 2 *H.* 4. 25.

4. Aiders and Consenters to such Counterfeiting are within this Act.

5. The Counterfeiting of the Privy Signet or Sign Manual not Treason within this Act, but made so by the Statute of 1 *&* 2 *P.* *&* *M.* *c.* 11.

V. Trea-

V. Treason concerning the Coin. Vide Sr. 8. 9. W. 3. c. 26.

1. Counterfeiting the King's Coin. This was Treason at Common Law, but yet the Judgment was only as in case of Petit Treason: And this being but affirmance of the Common Law.

Vide Si Mr. de Mint fait de memi allay, &c. est Treason, 3 H. 7, 20. Vide post. 298. 3 Inst. 17.

But whereas Clipping, *&c.* is made High Treason by subsequent Statutes, the Judgment is To be hang'd, drawn, and quartered, because introductive of new Laws.

V. 2 Lev. 98. contra.

Herein considerable.

1. What shall be a Counterfeiting? Clipping, Washing, and Filing of Money for lucre or gain, any of the proper Money of the Realm, or of other Realms, allowed to be current by Proclamation, not within this Statute, but made High Treason by Stat. 5 *El. c.* 11. but no corruption of Blood or loss of Dower.

Impairing, diminishing, falsifying, scaling or lightening the proper Money of this Realm, or the Money of any other Realm,

made current by Proclamation, their Counsellors, Consenters, and Aiders within neither of the former, but made Treason by the Stat. of 18 *El.* 1. but without corruption of Blood, or loss of Dower.

2. What his Money?

This extended only to the proper Money of this Realm:

But now,

1 *Ma. c.* 6. Forging or Counterfeiting Money made current by Proclamation, is High Treason.

14 *El. c.* 3. Forging of Foreign Coin not current here; Misprision of Treason in the Forgers, their Aiders and Abettors.

See the Stat. 8 & 9 W. 3. cap. 26.

And Note, The bare forging of the King's Coin, without uttering, is Treason, 6 *H.* 7. 13.

V. 12 Co. 81. 82.

Mes uttering de faux money fait deins le Realm sciant ceo destre fals est solment Misprision de Treason, 3. H. 7. 10. *Issint Receaving, Aiding, &c. cestuy que ad counterfeit,* Dy. 296. Sir *John Conyer*'s Case.

Vide post 127. contra

Nota,

Nota, Est grand Misprision, mes nemy Misprision de Treason, & issint resolve 1661.

But Note, in Wilson's Case in Keeling's Reports, Resolv'd, That if one knows others that coin Money, and he utter it, 'tis High Treason, for there are no Accessaries in Treason. Vid. post. 127.

2. The second Offence concerning Money declared Treason is, If any Person bring into the Realm counterfeit Money.

1. It must be Counterfeit.

2. Counterfeit to the similitude of *English* Money.

3. Brought from a Foreign Realm, and therefore not from *Ireland* barely.

4. Brought knowingly.

5. Brought in, and not barely uttered here: But if false or clipt Money be found in his hands, by the Statute *de Moneta* if he be suspicious, he may be arrested till he have found his Warrant.

6. He must merchandize therewith, or make payment thereof.

Certain High Treason made by subsequent Statutes in force.

[5 *El. c.* 1. Refusing Oath of Supremacy upon the second tender, Treason, without corruption of Blood.

So aiding one knowing him a maintainer of the Jurisdiction of the See of Rome. V. Alleyn's R. Prig's Case.

Extolling power of Bishop of *Rome* Premunire; 13 *El. cap.* 2. Bring in Bulls, or putting in execution, or reconciling to the See of *Rome* thereby, Treason.

Bringing in *Agnus Dei*, &c. Premunire, 1 *El. c.* 1. V. *Dy.* 282.

§. 23 *El. c.* 1. Absolving Subjects from Obedience, or reconciling them to Obedience of *Rome*: Treason in Reconciler and Reconciled.

§, 27 *El. c.* 2. Priest coming into the Realm, not submitting in two days, Treason. The like for *English* in Foreign Seminaries.

Petty

Note, The Stat. 1 *Mar.* doth not only repeal all Treasons, but all Declarations of Treasons, made by any Act of Parliament since the Stat. 25 E. 3. But by 13 *Car.* 2. the conspiring, compassing, and intending to levy War, is High Treason, in case they express or declare such Imagination, Intention, *&c.* by printing, writing, preaching, or malicious, or advised speaking. *Vide Keeling's* Reports, *sed quer.* of the Resolutions thereupon. And see now the Stat. 7 W. 3. c. 3. For regulating Trials in Cases of Treason, *&c.*

Petty Treason.

IS confined by Stat. 25 *E.* 3. to three Particulars:

1. Where a Servant kills his Master.

This extends to some other Cases:

1. Servant kills his Mistress.
2. Servant kills his Master's Wife.
3. Where a Servant, upon Malice taken during his Service, kills his Master after departure from his Service.

2. Wife killing her Husband.

If the Wife and a Stranger kill the Husband, petty Treason in the Wife, Murder in the Stranger.

If the Wife or Servant procure a Stranger to kill her Husband or Master, the Procurer accessary only to Murder:

der: But if she procure a Servant to do it, Treason in both.

3. Ecclesiastical Person, Secular or Regular, kills Superior.

Note, Aiders and Abetters, and Procurers to Petty Treason, are within this Act.

This Act not taken by Equity.

V. C. P. 20. Crom. 18. Dal. (edit. 1715) p. 338. H. 5. Car. Doddington's Case.

Yet Son kills Father or Mother, it is Petit Treason, receiving Meat, Drink, or Wages.

The Judgment in Petit Treason for a Man to be hang'd and drawn.

A Woman to be burnt.

Crom. 18.

Whatsoever will make a Man guilty or principal in Murder, will make a Man guilty or principal in Petit Treason.

Dal. c. 142. p. 338.

But if the Servant kill the Master upon a sudden falling out, this is not Petit Treason, but Manslaughter.

Crom. 19. Pigg's Case.

If the Servant or Wife be of Confederacy to kill the Husband or Master, and be in the same House, though not in the same Room, they are principals and guilty

ty of Petit Treaſon, for it is a preſence.

Servant tue Mr. per procurement le Feme abſent: il eſt Petit Treaſon in Servant, & Acceſſory al Petit Treaſon in Feme. 2. Si Eſtr. fait ceo per procurement Feme ou Servant: eſt Murder in l' Eſtr. & Acceſſory al Murder in Feme ou Servant. 3. Si Eſtr. fait ceo per procurement & in preſence de Feme ou Servant: eſt Pet. Treaſon in Feme ou Servant, & Murder in l' Eſtr. Dy. 332. 254, 128.

Of Felonies: And 1. Of Felonies of the Death of a Man.

THus far of High and Petit Treaſon.

Now for Felonies, they are either; by Common Law, by Statute.

Felonies by Common Law: And they are of four kinds:

1. Such as are committed againſt the Life.

2. Such as are againſt the Goods of a Man.

3. Such as are againſt the Habitation of a Man.

4. Such as are againſt the Protection of Publique Juſtice.

Felonies committed againſt the Life of two Natures.

1. That which is committed againſt his own Life, *Felo de ſe.*

2. Committed againſt another's Life:

1. Involuntary.

1. *Per*

1. *Per infortunium*, and therein of Deodands.
2. *Per necessitatem.*

In defence of Justice.
In defence of Self.

2. Voluntary, without Malice.

With Malice.

Felo

Felo De Se.

1. THE *Person.*

1. As in other Felonies, so in this, the Person that commits it, must be of age of discretion, and *Compos mentis*; otherwise no Forfeiture: Therefore if a Lunatick, during his Lunacy, a Man distract by force of Disease, or *non compos*, kill himself, no Felony,

2. As in other Felonies the death must ensue within a year and a day after the stroke, *&c.*

2. The Act may be voluntary. Involuntary in some cases.

If *A.* assault *B.* and *B.* falling down with his knife drawn, *A.* in pursuit to kill *B*, by haste falleth upon the knife, *A.* is *Felo de se*, and forfeits his Goods.

St. P. C. 16. Dalt. (Edit. 1715) p. 342.

But

But if *B.* were standing in his Defence, with his knife drawn, *A.* runs upon the Weapon and kills himself, *A.* is not *Felo de se*. C.P.C.p.54.

3. The Conviction.

1. If the Body can be seen, then the Conviction before Coroner, *super visum Corporis*, and not traversable.

2. If not seen, then before the Justices of the Peace, and then traversable by the Executor or Administrator. C. P. C. 55.

In the same manner, if enquired in *B. R.* in same County, traversable.

4. The Forfeiture:

1. When? by the Conviction.

2. How? relating to the stroke.

Therefore, Villain gives himself a mortal stroke; Lord seiseth goods; Villain dies; King shall have them.

3. Of what?

Joint things intire, all forfeited, unless in case of Merchants. C. P. C. 55.

Joint things severable, Moiety forfeit.

But joint Chattels in Husband and Wife, all forfeit for this Offence of Husband.

Chance-

Chancemedley.

FElony for the death of another, either involuntary, or voluntary.

Involuntary *per infortunium*;

Ex necessitate.

Involuntary *per infortunium.*

Chancemedley, where a Man doing a lawful act, without intent of hurt to another, and death casually ensues:

As, shooting at Rovers, or at a Bird, or hewing a Tree, and the Hatchet-head flies off.

A School-master in reasonable manner beating a Scholar, or Father his Son, or Master his Servant. Cr. 26.

Doing a lawful thing that may breed danger, and giving warning; Justing by command of the Prince.

But if the act be unlawful, then death ensuing, Manslaughter or Murder.

Shooting at a Deer in another's Park, the Arrow glanceth and killeth a stander by, Manslaughter. C. P. C. 56. Keeling 117.

Throwing Stones or ſhooting in the High-way, and death enſuing, Manſlaughter.

C. P.C. 57. But if a Man, knowing People paſſing by in the Street, throw a Stone, over the Wall, Murder.

Dalt. (Edit. 1715) p.352. Playing at Hand-ſword without command of the King, death enſuing, Manſlaughter.

So that an unlawful act, without an ill intent, Manſlaughter; with an ill intent, Murder.

St. P.C. c.15. And this cauſeth forfeiture of Goods; but a Pardon of Courſe upon the ſpecial Matter found.

Deodand.

BUt there is a death *per infortunium* without the default or procurement of another: Fall from a Tree, or by a Horse or Cart: And there Thing that occasions the Death is forfeited and Deodand: Wherein considerable,

1. What forfeited as a Deodand.

1. If a Man fall from a Cart, or from a Ship in fresh-water, it is a Deodand; otherwise in salt-water. C. P. C. 58

2. If an Infant under fourteen be slain by fall from a Cart, Horse, or Mill, no Deodand; but if slain by a Horse, Ox, or Bull, then a Deodand.

3. If a Man kill another with any Sword, a Deodand. Dalt. Just. p. 353.

2. When forfeited, *viz.*

When found by Inquisition; therefore the Jury ought to find Dalt. (Edit. 1715) c. 149.

the price; and this is before Coroner.

3. The Relation of the Forfeiture is to the ſtroke.

For by *Carus* *Plow* 260. If my Horſe ſtrike *A.* and *I.* ſell him, and then *A.* dies, the Horſe is forfeited as a Deodand.

Homicide

Homicide ex Necessitate.

THis of several sorts:

1. In reference to Justice.

2. In defence of his Person, House, Goods.

Homicide *ex necessitate*

§. 1. In reference to Justice, of several kinds:

1. In execution of Justice.

2. In advancement of Justice.

Homicide in execution of Justice requires certain prescripts.

1. That the Judgment be given by one that hath Jurisdiction in the Cause.

If a Justice of Peace give Judgment in Treason, the Execution thereof Murder in Judge and Officer. Dal. (171.5) p. 354, 355.

But if he give Judgment of Death in Trespass, Felony in the Judge, but not in the Officer that executes it.

2. That it be done by a lawful Officer.

Therefore if a Stranger of his Dal. c. 156.

own head, or the Judge that gives the Judgment, execute it, where it is to be done by the Sheriff, Felony.

3. That it be done purſuant to the Judgment.

St. P. C. c. 4. Judgment to be hang'd, Sheriff beheads him, Felony.

2. Homicide in advancement of Juſtice in Cauſes
{ Criminal,
{ Civil.

1. In Cauſes Criminal.

Dal. c. 150. If a Sheriff or Bailiff, having warrant to arreſt a Perſon indicted of Felony, and he will not obey, or ſuffer himſelf to be arreſted, the Bailiff kills him, no Felony.

Cro. fo. 27. The ſame, if any Perſon that purſues upon Hue-and-Cry, or otherwiſe, to arreſt a Felon that flies.

C. P. C. 221. If a Felon arreſted break away from his Conductors to Gaol, they may kill him, if they cannot otherwiſe take him.

But

But in the latter Case there must be a Felony done.

If a Prisoner assaults his Gaoler, and he kill the Prisoner, no Felony.

Rioters or forcible Enterers or Deteinors, standing in opposition to the Justice's lawful warrant, and one of them slain, no Felony.

Keeper or Parker may kill Hunters, if they fly or defend themselves. Cr. f. 28.

Champion in bre de drt, ou Combatant in Appele, excuse in killing the other.

2. In Civil Causes.

Though Sheriff cannot kill a Man who flies from the execution of a Civil Process, yet if he resist the arrest, the Sheriff or his Officer need not give back, but may kill the Assailant. C. Pl. c. 56.

§. So if in the arrest and striving together, the Officer kill him, no Felony.

Now touching all the former Homicides, these things observable:

1. There must be no Malice coloured under pretence of Necessity; for if it be, it alters the Case, and makes it Murder.

2. The Party that did the Fact must be arraigned, and upon Not Guilty pleaded, the Special Matter must be found.

3. Upon this Special Matter thus found, the Party is to be dismist without any Forfeiture or Pardon purchased.

---

2. Thus

2. THus of Homicide *ex necessitate* in reference to Publick Justice: Others there are that are grounded upon private Interest, and they of two kinds:

1. Justifiable, and consequently inducing no Forfeiture at all, nor needing Pardon.

2. Excusable, and yet inducing a Forfeiture.

1. Justifiable and inducing no Forfeiture, where a Person comes to commit a known Felony.

1. If a Man come to burn my House, and I shoot out of my House, or issue out of my House, and kill him, no Felony. Dal. c. 15.

2. If a Woman kill him that assaulteth to ravish her, no Felony.

3. If Thieves assault me in the High-way, or in my House to rob me, and I, or my Servant kill them, no Felony or Forfeiture. 24 H. 8. c. 5.

But if the aſſault in my Houſe were not to rob me, but to beat me, *&c.* there would be only *ſe defendendo*, and Goods forfeited, and a Pardon of courſe to be granted, becauſe they came not to commit a known Felony; for it cannot be judged whether he meant to kill me.

Dal. c. 150. If one come to enter into my Houſe, claiming Title, and I kill him, Manſlaughter.

Crom. 24. If *A.* enter wrongfully into the Houſe of *B.* riotouſly and forcibly, *B.* and others endeavour to fire the Houſe, *A.* kills, Manſlaughter.

Se

4

Se defendendo.

HOmicide excuſable *Se defendendo*, which though it ſave the Life, yet the Goods are forfeited; this requires theſe Things: What may be done, or not done ſe defendendo. Vide Keeling 128, to 138.

1. It muſt be an inevitable neceſſity.

In caſe of a juſtifiable Homicide, as of a Thief that comes to rob me, or by an Officer reſiſted in Executing an Arreſt, the Party need not give back to the Wall. C. P. C. f. 56.

But in this Homicide *ſe defendendo*, the Party that is aſſaulted not excuſed, unleſs he give back to the Wall. C. P. C. 57.

But if the aſſault be ſo fierce, and in ſuch a Place, that giving back would endanger his Life, then he need not give back. C. P. C. 57.

A Man fights, and falls to the Ground, then flying not neceſſary. Dalt. c. 150.

2. It muſt be in his Defence.

If *A.* be aſſaulted by *B.* and before a mortal wound given, *A.* gives back C. P. C. 56.

back till he come to the Wall, and then in his Defence kills *B.* this is *Se d fendendo.*

But if the mortal wound first given, then Manslaughter.

Dal. c. 150. Crom. 26. If *A.* upon malice prepense strike *B.* and then fly to the wall, and then in his own defence kills *B.* this is Murder.

But if there be Malice between *A.* and *B.* and *A.* strike first, *B.* retreats to the wall, and in his own defence kills *A.* this is *Se defendendo.*

Crom. fo. 25. If malice be betwixt *A.* and *B.* and *A.* assaults *B.* *B.* retreats to the wall, and then kills *A.* in his own defence; if it be in the High-way he shall be discharged; but if not, yet it is *Se defendendo. Copston's* Case.

Murder

Murder.

THus far of Homicide Involuntary: Vide Keeling 24. &c. 40, 50, 80, 89. &c. 120 to 138. Vide. post. 56.

Homicide Voluntary is either:

Ex malitia præcogitata, which is Murder.

Sine malitia, Manslaughter.

Murder is when a Person killeth another of malice within any County in *England*, so he die within a Year and a Day.

2. Who shall be said a Person killing?

A Man that is *Non Compos* kills another, this is no Felony. Dalt. c. 145. 2 Co. 27. Vide ante 10.

§. The same for a Lunatick during his Lunacy.

But he that incites a Mad-man to kill another, is a principal Murderer.

A Man drunk killeth another, this is Felony.

An Infant within Age of Discretion kills a Man, no Felony; as if he be nine or ten Years old.

But if by Circumstances it ap-

peareth he could distinguish between Good and Evil, it is Felony: As if he hide the Dead, make Excuses, &c.

Crom. 27.

St. P. C. c. 9. But in such Cases Execution is in prudence respited to obtain a Pardon.

2. What said Malice?

It is either implied or expressed.

Implied malice is collected either from the manner of doing, or from the Person slain, or from the Person killing.

1. Malice implied in the manner of doing.

C. P. C. 52. Poisoning wilfully any Man, implies Malice.

If a Man do an act that apparently must introduce harm, and Death ensue; as to run among a multitude with a Horse used to strike.

Dal. c. 145.

But note, that if it were with an intention to do harm, then Murder; if without such intention, Manslaughter.

The like of throwing a Stone over a House among many People, the intention of doing harm makes it

it Murder ; want of ſuch intention, Manſlaughter, becauſe the act unlawful.

For an Intention of Evil, though not againſt a particular Perſon, makes a Malice.

Killing any Perſon without provocation, Murder.

Vide Mawgridge's Caſe in Keeling's Reports.

A. comes to rob *B.* *B.* reſiſts and ſtrikes, *A.* kills him, Murder.

A. diſtorts his mouth, and laughs at *B.* who thereupon kills him, Murder.

M. 42. 43 El. Brame's Caſe.

2. Malice implied in reſpect of the Perſon killed.

If a Watchman or Conſtable, or any that comes in his Aſſiſtance, doing their Office, be killed, it is Murder, though the killer knew not him to be ſuch.

4 R. Hamden's Caſe, Young's Caſe.

If any Magiſtrate or Miniſter of Juſtice, having a lawful Warrant, be killed doing his Office, it is Murder: As where a Serjeant comes to arreſt,

1. Though in the Night.
2. Though on Sunday.
3. Though upon the Arreſt he

Vide Sir H. Ferrer's Caſe, in 1 Jones, & in Cro. Car. & Tompſon's Caſe in Keeling & v. Cro. Car. 183.

he ſhew not out of what Court, or whoſe Suit.

9 Rep. Mackally's Caſe.

4. Though the Proceſs erroneous.

V. Cro. Car. 183. Pewe's Caſe.

5. Though he ſhew not his Warrant or Mace where it is not demanded.

But if the Officer do what is not warrantable, as break open a Window to arreſt, there though ſlain, Manſlaughter only, *P.* 15 *Car. Cook*'s Caſe.

Malefactors come into a Park, the Parker ſhoots, they fly, he purſues, they kill him, Murder in all; for their firſt Entry was with a malitious intent. M. 17 *Jac. Uſran*'s Caſe.

3. Malice implied in reſpect of the Perſon killing.

A. aſſaults *B.* to rob him, *B.* reſiſts, *A.* kills him, Murder.

Priſoner by Dureſs of the Gaoler comes to an untimely end, Murder.

Executing Martial Law in time of Peace, Murder.

2 Malice Expreſs conſiderable,

1. In the Principal in the firſt degree, that doth the act.
2. In the Principal in the ſecond degree, that is preſent and aiding, or abetting.
3. In the Acceſſory before the Fact.

1. In the Principal in the firſt degree.

1. If a Perſon have no particular Malice againſt any ſpecial Perſon, but comes with a general Reſolution againſt all Oppoſers, if the act be unlawful, and Death enſue, it is Murder: As if it be to commit a Riot, to enter into a Park. Lord *Dacre*'s Caſe. Crom. 20.

2. If there be Malice between *A.* and *B.* and they meet and fight upon that Malice, though *A.* gives firſt blow, yet if *B.* kill him, it is Murder. Keeling 87. 111, 113, 114, 118. Crom. 21.

If there be Malice between *A.* and *B.* and *A.* aſſault *B.* and after *A.* flies to the Wall, and there in his own Defence kill *B.* by ſome this is Murder, but *Quære.* V. Keeling 58.

If

V. Keeling 56. If there be a Quarrel between *A.* and *B.* and *A.* challenge *B.* *B.* declines it; but at length upon importunity, and to vindicate his Reputation, meets and fights, and kills *A.* this is Murder, P. 14 *Jac. Taverner's* Case.

Keel 27. 127, 128. If *A.* and *B.* fall out upon a sudden, and they presently agree to fight, and each fetch a Weapon and go into the Field, and one kills the

C. P.C. 57 55. other; this only Manslaughter, because the Blood never cooled: But

Ibid. 27. 56. 127. otherwise, if they appoint to fight the next day.

Laurence's Case. 38 El. *A.* and *B.* fall out, *A.* saith he will not strike, but will give *B.* a pot of Ale to touch him, *B.* strikes, *A.* kills him, Murder.

If *A.* and *B.* are in Malice, and *A.* challenge the Field, and *B.* refuse to meet, but saith he shall go to morrow to such a Town, *A.* meets him, assaults him, and *B.* kills him, Manslaughter, and no Murder.

H. 9 Jac. Rawly's Case. The Child of *A.* beats the Child of *B.* who runs home to his Father, and he runs three quarters of a Mile,

beats

beats the other Child, and he dies, Manslaughter.

3. If malice be not continuing till the death, no Murder.

A. and *B.* combat upon malice, and are parted, and after they meet and combat upon the sudden, and one kills the other, by some not Murder, because the first Malice satisfied. Cro. 21.

If the party killed had wounded at the first combat the party slaying, *Quære.*

A. and *B.* are at malice, and reconciled, and after upon a new occasion fall out and kill, no Murder.

4. Though the malice did not rise so high as death, but intended only to beat the party, yet if malitious, it is Murder if death ensue. Keeling 64, 133, 134.

A Keeper of *Esterly* Park finds a Boy stealing wood, bound him to his Horse-tail and beat him, the Horse ran away, kill'd the Child, Murder, for it was a deliberate act, M. 4 *Car. B. R. Holloway's* Case. Cro. Car. 131. m. Case.

E 5. The

5. The malice intended to one, *egreditur persona*, and makes the death of another upon that malice, Murder, and qualifies the act in the same manner, as if it had had its due effect.

Dyer 128. *A.* having malice at *B.* strikes at him, and misseth, and kills C. this is murder in *A.* and if it had been without malice prepense, Manslaughter.

Com. 101. Ellys's Case. *A.* having malice to *B.* assaults him, and kills the Servant of *B.* this is Murder in *A.*

A. lays poison to kill *B.* and *C.* at misadventure takes it and dies, Murder in *A.* Contrary if it had been laid to kill Rats; then *infortunium.* 9 Rep. Gore's Case.

A. and *B.* combat upon malice; *C.* comes to part them, *A.* kills C. this is Murder, and *per ascuns*, Murder in both; and if the falling out were sudden, then only Manslaughter in him that kill'd him. Vide *Dyer* 128. 20 *E.* 3. *Corone* 262.

6. The Malice must be of Corporal damage to the party.

2. Prin-

2. Principals in ſecond degree, that are aiding and abetting.

1. If two or more come together to kill, rob, or beat a man, or to commit a Riot, and one of them kills a man, this is murder in all them of that party that are preſent, aiding or abetting him thereunto, or that were ready to aid him, though but lookers on; otherwiſe if he came there by chance. Dal. 280. Br. Tit. Coro. 171. St. P. C. c 40.

2. All are ſaid to be preſent that are in the ſame Houſe, though in another Room, or in the ſame Park, though half a mile diſtant, and out of view; therefore if they came to commit a Felony, ſuch perſons aiding or abetting ſhall be ſaid preſent. 34 H. 8. B. Coron. 172. M. 17 Jac. Warnial's Caſe. Cro. 19. Dal. c. 145.

3. *A.* and *B.* fall out, and appoint the field; *A.* takes *C.* his Second, *B.* takes *D.* his Second; *A.* kills *B.* this is doubtleſs Murder in *C.* and it hath been held Murder in *D.* alſo, for it is a compact; but it ſeems otherwiſe. Dal. c. 145. Dy. 128.

4. If *A.* and *B.* having malice prepenſe meet and fight, and *C.* the

Servant of *A.* not acquainted therewith, take part with *A.* his Master, and kill *B.* this is Murder in *A.* but only Manslaughter in C.

Com. 100.

The same Law if C. came in suddenly and took part with *A.* and killed *B.* V. Sir *Ferdinando Cary's* Case, 14 *Jac.*

Keel. 61, 62.

Mes si un vient la per chance, & nabette, nest principall, nec accessory al Manslaughter ou Murder, Stamf. 40.

Keeling 66.

3. What malice in the Accessary before the Fact.

A. commands *B.* to kill C. with a Gun, he kills him with a Sword, *A.* is accessary to this Murder, because the killing was the substance.

But if he command *B.* to kill C. and he by mistake kill *D.* this is Murder in *B.* but *A.* is not accessary thereunto.

A. commands *B.* to beat C. who beats him, whereof he dies, this is Murder in *B.* and *A.* is accessary, because death ensues upon the act commanded.

4. What

4. What Killing?

Poiſon, Weapon, Gun, Bow, Cruſhing, Bruiſing, Smothering, Strangling, Famiſhing, inciting Dogs.

§. Laying a Sick man in the cold.

Laying an Infant in an Orchard under Leaves, and he ſtricken with a Kite.

A man keeps a Beaſt uſed to ſtrike knowingly, and ties it not up; the Beaſt kills a man, Felony by ſome, by others not, but a great miſdemeanour, 3 *E*. 3. *Cor*. 311. St. Dal. c. 145.

5. What the perſon killed?

It muſt be a perſon in *rerum natura*.

If a Woman quick with Child take a potion to kill it, and accordingly it is deſtroyed without being born alive, a great miſpriſion, but no Felony; but if born alive, and after dies of that potion, it is Murder. Intent to conceal it, no Murder. Keel 32.

The like if it dies of a ſtroke given by another in like manner.

§. Counſel before the birth to deſtroy it, and after the Child is born de- C. P. C. c. 7. Dal. c. 145. contra.

Ibid. destroyed accordingly, the counsellor is accessary.

6. What a place within the Realm?

Stroke and death *in partibus transmarinis* not punishable at Common Law, but before the Constable and Marshal. C. PC c. 7.

Stroke and death upon the Sea inquirable before the Admiral, or according to the Stat. of 28 *H.* 8. *c.* 13. But stroke upon the Sea, and death within the Body of the County, not punishable at all. *Note*, This is now altered by Stat.

If the stroke in one County, and the death in another, the party shall be indicted where the death happened.

An accessary in the County of *A.* to a Felony committed in the County of *B.* the accessary after Certificate of the Conviction and Attainder of the principal, may be arraigned upon an Indictment in the County of *A.* where he was accessary. Stat. 2 *E.* 6. *c.* 24. V. *Formam Processus inde in B. R. C. P. C. cap.* 7. *Overbury's* Case.

7. The

7. The party must die within he year and day of that stroke, or poison, &c. V. Keel. 26. tho' the party dye thro' his own disorder or negligence, 'tis no excuse.

Manslaughter.

See the differences between Murder and Manslaughter, in Keel. 24, 25, 40, 50, 59, 66, 80, 121, 124.

KILLING another upon a sudden falling out, or provocation, or unjustifiable act, Manslaughter.

1. What a sudden falling out?

C. P. C. c. 8.

Two combat and part, and presently come together and fight, or one presently fetcheth a Weapon and killeth the other, or they presently fetch their weapons, and go into the field, and one kills the other, Manslaughter.

Divers Rioters enter into another's house forcibly, and eject the people; afterwards they being in possession, the party ejected, with twenty more, come in the night to the house, endeavour to fire it, and one within shoots and kills one of the assailants; ruled to be Manslaughter, because their entry and holding with force, illegal; and not Murder, because a sudden provocation.

So *A.* claims title to the house of *B.* *A.* attempts to enter and shoots at the house; *B.* shoots out and kills *A.* adjudged Manslaughter.

Two fall out and fight, and one breaks his Sword; a stranger standing by sends him another, and he kills therewith, Manslaughter in both. Dal. c. 146.

2. What a sudden provocation?

Two strive for the wall, and one kills the other, Manslaughter.

3. What unlawful act, whereupon death ensuing will make Manslaughter.

If the unlawful act be deliberate, and tend to the personal hurt of any immediately, or by way of necessary consequence, death ensuing, is Murder.

But if either such deliberation or intent of personal hurt be wanting, Manslaughter.

Two play at Foils, and one kills the other, Manslaughter. Sir *John Chichester*'s Case. 11 *H.* 7. 23. V. *Keil.* 108. 136. *Wrasling, & un tu autre.* Alleyn's Reports. 12.

1 Jones 432. Williams's Case.

A man throws a ſtone at another, which glanceth and killeth another, Manſlaughter ; and not Murder, becauſe no malitious intent to hurt; not *per infortunium*, becauſe doing an unlawful act.

There is a particular Manſlaughter, wherein Clergy is ouſt, by the *Stat.* 1. *Jac. c.* 8. wherein,

1. He that is ouſted of Clergy by that Statute, muſt be eſpecially Indicted purſuant to the Statute.

V. in Murder ante 46.

2. It extends to him that actually gave the ſtroke, not to thoſe that are preſent.

3. Need not conclude *contra formam Statuti.*

4. Although the Indictment be ſpecial upon the Statute, yet the Jury may find general Manſlaughter. H. 23 *Car. B. R. Page*'s Caſe.

A Newgate rep. 16 *Car.* 2. A man whips his horſe in the ſtreet to make him run ſpeedily, and the horſe runs over a Child, and kills him; Manſlaughter: But another whips the horſe, whereby he ſprings out, and runs over a Child, and kills him; *per*

per Infortunium. Nota, Indictment de Murder ꝑ *ceo que est per infortun, sur non cul. pled, Jury poet trover lui non cul si soit Coroners Inquest que trove ceo per misfortune & le party conust ceo.* Prettye's Case.

Stabbing. Vide Alleyn's Reports 43. *Page* and *Harwood* were indicted upon the Stat 1 *Jac.* 1. *c.* 8. for Stabbing of *J. S.* the Indictment was that *A.* stab'd him, and that *P.* and *H.* were present abetting, *&c. contra formam Statuti* and *per Cur,* they had their Clergy tho' found guilty *contra formam Statuti,* for upon the Indictment they might all have been found guilty at Common Law. And the Indictment needed not to have concluded *contra formam Statuti,* for the Statute alters not the Nature of the Offence, but only takes away a privilege which the Common Law allowed in such Cases. And note, upon the *Stat. of Stabbing,* Clergy is only taken from him who actually gave the Wound. *Vide* Keeling's Rep. 27, 128, 130.

Larceny.

Larceny.

WE come to Offences Capital, which refer to the Goods of any Person, *viz.* Larceny, which is of two kinds;

{ Simple Larceny,
{ Mixt and complexed Larceny.

Simple Larceny of two kinds:

Grand Larceny, of the value of twelve pence.

Petit Larceny, under that value.

Poulton de Pace, &c. 125. above the value of 12 *d.*

Simple Larceny, a felonious and fraudulent taking away by any person of the meer personal goods of another, not from the person, nor out of his house, to the value of twelve pence.

I. What

I. What ſhall be ſaid a felonious taking, imports two things:

1. A taking neceſſary; the Indictment muſt be *cepit*; if it be *felonice abduxit Equum*, not ſufficient.

If a perſon find goods loſt, and convert them, though the converſion were *animo furandi*: yet no Felony. C. P. C. 108.

If a man hath a bare charge of goods, Felony may be by him committed: As a Butler that hath charge of Plate; Shepherd of ſheep; the like of him that hath a bare ſpecial uſe, as the gueſt that hath Plate ſet before him. Ibid.

But he that harh a poſſeſſion by delivery thereof cannot commit Felony.

A Carrier hath goods delivered to him, and he carries them away, no Felony.

A. lendeth his horſe to a Stranger, who rides away, no Felony.

A Clothier delivers Yarn to a Weaver

Keeling's Reports.
A Silk-throwster had Men came to work in his own House, and delivered Silk to one of them who stole it; agreed to be Felony notwithstanding the delivery.

Weaver to weave, he carries it away, or imbezils it, no Felony.

But this hath two Exceptions:

1. If the privity be determin'd, that it may be Felony.

A. delivers a Pack or a Tun of Wine to a Carrier, he opens it, and takes out Goods or Wine, *animo furandi*, Felony.

So if *A.* deliver goods to *B.* to carry to a certain place, he carries it to the place appointed, and after takes it *animo furandi*; Felony.

2. By Stat. 21 *H.* 8. *c.* 7. whereby if a Servant goes away with the goods of his Master delivered to him above value of 40 shillings, herein

1. Extends not to Apprentice, nor Servants within eighteen years.
2. Requires a Delivery.

C. P. C. c. 44. Dalt. c. 155.

If one Servant deliver the goods to the other, this a delivery by Master.

If the Maſter deliver an Obligation, or deliver Cattel to ſell, and the Servant receive the money and depart with it, it is no Felony; the like if he had gone away with the Obligation.

3. He muſt go away with it. Waſtefully conſuming, &c. thereof, no Felony.

4. Now by the Stat. of 1 *E.* 6. *c.* 12. he may have his Clergy.

5. He muſt be a Servant at the time of the delivery, and going away; therefore for imbezilling after Maſter's death, Stat. 33 *H.* 6. *c.* 1. gives remedy.

6. If a Servant receive his Maſter's Rents, and go away with them, not within the Statute.

If a man, ſeeing a Horſe in the Paſture of the Owner, having a mind to ſteal him, obtains a Replevin, and thereby hath the Horſe delivered, this is a Felonious taking.

C. P. C. 47. So to take Goods, *&c.* by colour of a Ca. Sa. *&c.* Vide Farr's Caſe in Keel. Reports, and Siderfin 256.

If

If *A.* feloniously take my Horse and *B.* feloniously takes him from him, *B.* may be appealed or indicted as of a felonious taking from me. Crom. 34.

§. Stat. 33 *H.* 8. *c.* 1. False token.

Un prist feme de J. S. *oue ses biens countre le volunt, est Felony : Contra si feme prist les biens le baron & ala oue estr. de sa bone volunt.* 13 Ass. 6. *Issint si feme covert prist biens le baron, ou eux dona al estr. que eux import, nest Felony.* Abridg. Ass. 63.

II. What a carrying away?

C. P. C. c. 47. A Guest takes sheets out of the bed, brings them into a Hall with an intent to carry them away, but is apprehended before this; a carrying away.

A. takes the horse of *B.* with an intent to steal him, but is apprehended before he can get out of the Pasture; this is taking away.

Crom. 33. *A.* kills my sheep, strips them, carries away their skins, Felony; so if he pull off their wooll.

III. By

III. By whom? and who such a person as may commit Larceny?

An Infant under fourteen years may commit Larceny; but prudence to respite Judgment; yet one under fourteen burnt in the hand; Precedents. D. l. 157.

A Feme covert by her own act may commit Larceny, and in such case the husband may be Accessary to the wife in receiving her; but not *e converso.*

But she cannot feloniously take her husband's goods; and though she so take her husband's goods, and deliver them to a stranger, yet no felony in the stranger.

If husband and wife do both a felony, this is felony in both, and both arraigned for it. Dal. 157.

Nota, Books old and latter, and Practice, *contra.* Kel. 31.

If the wife commits murder by coercion of her husband, murder in both; but if theft, no Felony in

F her;

her; but a bare Command excuseth her not.

But if a Servant commit theft by coercion of his Master, yet it is Felony.

IV. What meer personal Goods?

Dal. c. 83. 1. If they are in the realty, or annexed thereunto, no Larceny: As Corn or Grass growing, Apples on Trees.

§. Stealing a Chest of Charters, no Felony, though the Chest above value.

Taking Lead off a Church, no Felony; otherwise if he leave it a while, and after come and take it.

Taking an Infant Ward, no Felony.

2. If they are of a base Nature, as Mastiffs, Dogs, Bears, Foxes, Monkeys, Ferrets, or their Whelps, there can be no Felony of them; but of Hawks reclaimed Felony may be.

V. What

V. What said the Goods of another.

1. He that hath a special property, as a Bailiff, &c. they are his goods *pro tempore.* *A.* bails goods to *B.* and after to the intent to charge *B.* steals them from him, Felony in *A.* 21 *H.* 7. *Kel.* 70. *Cloth in maines Taylor.*

2. He that takes the goods of a Chapel in time of vacation, indictable *quare bona Capellæ*; so *bona Parochianorum*, *bona mortui*, or *bona ignoti. &c.* Dal. c. 156.

So to steal the shrowd off a person buried; and it shall be *bona executorum.* V. *tamen contra*, 15 *Jac. Nottingham*'s Case. C. P.C. c. 47. 12Co. Heyne's Case.

But taking of Treasure trove, Wrecks, Waifs and Strays before seisure, no Felony.

Taking an Obligation Felony, because in action.

Taking fish in a River no Felony, but fish in a Net, Trunk, or Pond, Felony, because not at their natural liber-

liberty: So of old Pigeons out of the houſe.

Where a man hath a property only *ratione loci*, or *privilegii*, in things *feræ naturæ*, as Coneys or Deer in my Ground, Park, or Warren, no Felony.

2 Inſt. 201.

But if reduced to tameneſs, and fit for food, as Deer, Coneys, Cranes, Partridge, Pheaſants, he that ſtealeth them, knowing them tame, committeth Felony.

Mes ſil ne conuſant de ceo tamen, eſt Felony. V. M. Charta. 201.

So of Swans marked and pinioned, or Swans unmarked if tame, kept in a Mote, Pond, or private River.

Where a Man hath a property *ratione impotentiæ* in things wild by nature, as young Hawks in the neſt, young Pigeons in the neſt, Felony thereof.

Taking of Eggs of Hawk or Swan out of the ground of another, no Felony, but puniſhable by Statute.

But taking any thing *domitæ naturæ*, as Duck, Hen, Geeſe, Turkeys, Peacocks, or their Eggs; or Dome-

ſtick beaſts, as Horſes, Mares, Colts, &c. or their young, Felony.

VI. Where this ſhall be ſaid a felonious taking.

If *A.* ſteal goods in the County of *B.* and carry them into the County of *C.* he may be appealed or indicted in the County of *C.* for Larceny, but can be indicted of Robbery only in the County of *B.* only in the former caſe the Stat. of 25 *H.* 8. *c.* 1, ouſts them of their Clergy, if they were not to have had Clergy if arraigned in the County of *B.* where the Robbery committed. Crom. 34. V. 4 H. 7. 5.

Si gueſt priſt ſheets hors de lect feloniouſly, & eux import in hale, & la ſur fcar de purſuit relinquiſh eux, Felony. 27 Aſſ. 39.

VI. Of the value of twelve pence or above.

1. *Nota,* That in caſe of Grand Larceny it muſt be above the value of twelve pence; and if it be but Weſt. 1. c. 15. 21 Jac. c. 6.

of the value of twelve pence, or under, it is Petit Larceny.

2. If two ſteal goods to the value of thirteen pence, this is grand Larceny in both.

Dal. c. 154. Crom. 36. St. P. C. 24.

3. If one perſon at ſeveral times, at one time ſteal four pence, at another ſix pence, at another three pence, in all amounting to above twelve pence, from the ſame perſon, all theſe put together in one Indictment, amount to grand Larceny; and Judgment of death.

4. If a man be indicted of ſtealing goods to the value of ten ſhillings, and the Jurors find ſpecially, as they may, the value but ten pence, 'tis but petty Larceny, and no Judgment of Death.

And note, petty Larceny is Felony, though not of death; and for this he ſhall forfeit Goods, and be ſubject to whipping or other Corporal puniſhment. *Iſſint ſi fugam fecit furt biens.* Coron. 106.

Rob-

Robbery.

COmplicated or mixt Larceny, which hath a further degree of guilt in it.

1. For that it is a taking from the person.

2. For that it is a taking out of the house.

1. Taking from the person.

1. Where the person is put in fear, and then 'tis Robbery.
2. When not put in fear, and then 'tis Larceny from the person.

Robbery is a felonious and violent taking away from the person of another money or goods to any value, putting him in fear.

1. Violent and putting him in fear; the words of the Indictment run, *violenter & felonice*, and that distinguishes him from a Cut-purse.

2. Taking away.

1. An assault to rob without any taking, is no Felony. Stamford's P. C. 28.

 If

If a Thief, with or without weapon drawn, bid the party deliver his purse, and he doth it, this is a taking to make it Robbery.

Crom. 31. If a Thief command to deliver his purse, and he deliver, and the Thief finding little in it, deliver it back, this is Robbery.

C. P.C. c. 16. If a Thief compel the true man by fear to swear to fetch him a sum of money, which he doth accordingly, and the Thief receives it, it is Robbery.

If the true man's purse be fastned to his girdle, the Thief cuts the girdle, the purse falls to the ground, no Robbery; but if the Thief take up the purse, though he let it fall again, Robbery, though he never take it up more.

All that come in company to rob, Principals, though one only actually do it.

A. B. and C. assault *D.* to rob him in the High-way, but rob him not, for that he escaped: *A.* rides from the rest, in the same High-way, and robs *E.* out of view of the rest, and came

Crom. 34. And. 116. Pudsey's Case.

came back to the rest, and for this *B.* and *C.* arraigned and hanged, though assented not, because they all came to the end to rob. *Pudsey's* Case.

3. Taking from the person.

If the true man, seeking to escape, cast his Purse into a Bush, or let fall his Hat, if the Thief take it, Robbery.

Taking a thing in the presence, is in law a taking from the person.

If one take or drive my Cattel out of my Pasture in my presence, this is Robbery, if he make an assault upon me, or put me in fear. Dal. c. 154.

But if he take any thing from my person without putting me in fear by assault or violence, no Robbery; and the Indictment runs that he took it from the person violently and feloniously, putting him in fear. Dalt. ibid. Dy. 224. Dalt. ibid.

4. Of what value soever, C. P.C. c. 16.

Though under twelve pence.

Mes in foren County in tiel case Petit Larciny, car ne'st Robbery la. 2 Jac. *More's* Rep.

Now though Robbery and simple

ple Larceny are both Capital, yet they differ in these Respects:

1. The Principal and Accessary before are ousted of Clergy, but not in simple Larceny.

§. Stat. 23 *H.* 8. *c.* 1. 1 *E.* 6. 12. 25 *H.* 8. 3, 4 *&* 5 *Phil. & Ma.* *c.* 4. *Nota*, speaks of Robbery in or near the High-way.

2. In the form of the Indictment:

An Indictment of Robbery supposeth an assault, beating and wounding, and taking from the person *felonice*; or at least assault and putting in fear, *felonice & violenter cepit a persona*: Other Indictments, though of a taking from the person, yet not *violenter*.

3. In case of other thefts, though from the person, not felony of death, unless it exceed twelve pence: But here it is Felony of death if never so small.

Larceny from the Person.

LArceny from the person without putting in fear; which may be either by picking the pocket, or cutting the Purse, which is supposed to be done *clam & secrete a persona.*

In this Case by the Stat. of 8 *El.* c. 4. if the Indictment pursue the Statute, which is secretly without the knowledge of the party, *clam & secrete*, he is ousted of his Clergy.

But if it be under value of twelve pence, then it remains petty Larceny, as before; for the Statute did not alter the Offence, though it took a Privilege. C. P.C. c 84. Crom. 103.

Larceny from the person, which is neither *clam & secrete a persona*, nor with putting in terror, nor so laid in the Indictment, nor so found by the Jury, Clergy. *Dyer* 224. 17 *Jac. Harman*'s Case.

Larceny from the House.

LArceny receives another aggravation when it is taken from the Habitation of a man.

Per Stat. 23 H. 8. c. 1.

Robbing any perſon in their dwelling-houſe, the owner, his wife, or children, or ſervants being within, and put in fear, ouſted of Clergy in caſe of Conviction, together with Acceſſaries before, by Stat. 23 *H.* 8. *c.* 1.

Felonious taking of goods to the value of five ſhillings out of any dwelling-houſe or out-houſe, though no perſon within, ouſt of Clergy, by 39 *El. c.* 15.

Theſe have a mark upon them as Larcenies complicated, and ſo ouſt of Clergy. V. *infra, Clergy.*

Piracy.

Piracy.

TO this we may add Piracy and Depredation upon the Sea.

This at Common Law conceived petty Treason, if done by a Subject. C. P.C. c. 49.

But this alter'd by Stat. 25 *Ed.* 3.

Since that Statute an offence triable by the Civil Law till 28 *H.* 8. 15.

The Stat. 28 *H.* 8. alters not the offence; but it remains only an offence by the Civil Law: and therefore a pardon of all Felonies doth not discharge it: but it gives a trial by the course of Common Law: More 756. Ibid.

1. It extends not to the Accessaries: but if the Accessary were at Sea, triable by the Civil Law; if at Land, by no Law: for Stat. 2, 3 *E.* 6. extends not to it. More ibid

2. It extends not to Offences in Creeks or Ports within the Body of a County, because punishable by the Common Law.

3. Though

3. Though it give forfeiture of Life, Lands, and Goods, yet no Corruption of Blood.

4. *Paine fort & dure* in case of standing mute.

Note, Clergy is not allowable for Piracy, if arraigned upon the Stat. 28 *H*. 8. and the Piracy made *in alto mari*: For the Stat. does not make it Felony, but only appoints the manner of Trial. *Mo*. 756.

Burglary

Burglary.

V. Keel. 30, 42, 43, 62, 67, 69. 82, 84. &c.

3. WE come to the offences against the dwelling or habitation; and that of two kinds:

1. Burglary.
2. Arson, or Burning.

Burglary by the Common Law is, where a person in the night time breaketh and entreth into the Mansion-House of another, to the intent to commit some Felony within the same, whether the felonious intent be executed or not.

I. What shall be said in the Night?

By some after Sun-set and before Sun-rising it is night. *Dal. c.* 99.

But it seems that so long as the Countenance of a person may be discerned it is day. *Coron.* 293. C. P. C. c. 14.

II. What

1 And. 115. If a Thief by Night comes to a Houſe, and one within opens the Door and the Thief intending to kill him, ſhoots at him; the Bullet miſſes the Man, but breaks thro' the Wall on the other ſide; 'tis no Burglary. So to break open a Cupboard fixt to the Freehold. Keel. 63, 69.

II. What breaking and Entring?

The entring into a houſe by the doors open is a Breaking in Law; but here not ſufficient without an actual breaking: therefore if the door be open, or window be open, and the Thief draw out Goods thereby, no Burglary.

But if the Thief break the window, draw the latch, unlock the door break a hole in the wall, theſe are Breaking.

And as there muſt be a Breaking, ſo there muſt be an Entry:

Setting the foot over the threſhold;

§. Putting the hand, or a hook, or a piſtol within the window, or door;

Turning the key where the door is locked on the inſide.

§. An Entry.

Keel. 42, 43, 44, 82.

In ſome caſes Burglary without actual breaking.

Divers

Divers come to commit Burglary, and one does it, the rest watch at the Lane's end, Burglary in all.

A Thief goes down a Chimney to rob, Burglary. Crom. 30.

Thieves having an intent to rob, raise Hue-and-Cry, and bring the Constable, to whom the Owner opens the Door, and when they come in, they bind the Constable, and rob the Owner, Burglary. V. Keeling 62, 63, 82. C. P.C. 14.

A Thief assaults the House, the Owner for fear throws out his money, it seems not Burglary, but only Robbery.

A Thief gets in by the Doors open in the Day, lies there till Night, then robs and goes away; no Burglary: But if he break open the Door to go out, Burglary. Dal. c. 151. Keeling 70.

The Servant opens the Window to let in a Thief, who comes in and steals; Burglary in the Stranger, but Robbery in the Servant. Dal. ubi supra.

If *A.* enter into the Hall by the doors open, the Owner retires to a Chamber, and there *A.* breaks in, this a Breaking and Entring.

G If

If Thieves enter into a Houſe, through a hole made there before, no Burglary.

V. Keeling 67. m. cs. Trin. 16 Jac. Edmond's Caſe.

A. lies in one part of the Houſe, *B.* his Servant in another, between them a Stair-foot-door latched, the Servant in the Night draws the Latch, and enters his Maſter's Chamber to murder him, Burglary.

V. Keeling 27, 52, 63, 69, 83, 84.

III. What, a Manſion Houſe?

The Church a Manſion Houſe within the Law.

§. The Out-buildings, as Barns, Stables, are parcel of the Manſion Houſe, and Burglary may be committed in them.

Nota, *L'uſe ore eſt, ſi ſoit un Barne ou Stable* disjoined at any diſtance from the Houſe, *neſt Burglary.*

Burglary may be committed in a Manſion Houſe, though all Perſons be out upon occaſion.

V. 4 Co. Brook's Caſe.

So if a Man hath two Houſes, and ſometimes lives in one, ſometimes in another.

A Shop parcel of a Manſion houſe.

A

A Chamber in an Inns of Court, where a Person usually lodges, a Mansion House.

V. Cro. Car. Evans and Finch's Case

But a Booth is not; and therefore remedy specially provided *per Stat.* 5 *E.* 6. *c.* 9.

Lodgings in Somerset-House, &c. not the Mansion House of the Lodger, but of the K.

But an Indictment *quod fregit clausum ad ipsum interficiendum,* no Felony, for no Mansion House.

V. Keeling, Burgesses Case.

A. leases to *B.* a Shop, parcel of his House, to work in, where *B.* works in the Day, which is broken, ruled not Burglary, because severed *per* Lease. *Trin.* 17 *Jac.*

V. 1 And. 115. ante, p. 80.

IV. With Intent to commit some Felony.

If the House be broken and entred with an intent to commit a Trespass, as to beat the Owner, no Felony.

V. 1 And. 115. Burglary, tho' not entred. C. P. C. c. 14.

If with intent to commit a Rape, by some no Burglary, because no Felony at Common Law; but this seems otherwise, though the Felony be not done.

V. Keeling 30. 'tis Burglary.

What breaking of a House or robbing it, ousts Clergy, V. Keeling 31, 58, 67, 70. What words in a Stat. shall not oust Clergy, vide ibid. 104.

The Indictment runs, *Burglariter & felonice domum,* &c. *fregerunt vel intraverunt ad ipsum,* &c. *interficiendum.*

And by the Stat. of 18 *El. c.* 6. Clergy taken away in all Burglary.

Arson.

BUrning is Felony at Common Law by any that shall maliciously and voluntarily burn the House of another. Vide 11 Co. 29, &c. Poulter's Case. Cro. Car. 376, 377 4 Co. 20. 1 Jones 351. 3 Inst. 66 3 H. 7. 10 2 In. 188. Stamf. P. C. 36.

Burning.

Setting fire to a House, without burning it, or any part of it, no Felony; but if part of the House be burnt thereby, it is Felony by Common Law. Stat. West. 1. c. 15. 2 Inst. 185. &c. 11 H. 7. fo. 1. 3 Inst. 66. Stamf. 36.

Maliciously.

A. intending to burn only the House of *B.* thereby burns the House of *C.* this is Felony; and he may be Indicted, That *ex malitia præcogit'* he burnt the House of *C.*

A. maliciously burns his own House, to the intent to burn others, but none else but his own burnt, ruled no Felony, but a great Misdemeanor; upon which set in the Pillory, and bound perpetually to good Behaviour. 9 *Car. B. R. Haines's* Case. V. 1 Jones 351. & Cro. Car. 274.

Mes si le meason d'autre pt c est combure, est Felony.

The House.

In-set House, or Out-set House.

If parcel of the Mansion House, as Stable, Mill-house, Sheep-house, Barn, and no Clergy.

Quære 11 Co. 29. b. contra. 3 Inst. 114. Stamf. 123.

§. But burning of a Barn, not parcel of a Mansion House, if it hath Corn or Hay in it, Felony, otherwise not.

But Felon not oust of Clergy, unless part of a Mansion House or Barn with Corn.

Burning the frame of an House by 37 *H.* 8. attempting to burn a Stack of Corn by 3 & 4 *E.* 6. made Felony but both repealed. 1 *Ma.*

But in *Northumberland*, *Cumberland*, *Westmorland*, and *Durham*, Felony to burn a Stack of Corn, by 43 *El. c.* 3.

Nota, The Indictment of Burglary *Domum Mansionalem*; of Arson only *Domum*.

Breach

Breach of Prison.

NOW we come to thoſe Felonies that are the hindrance of ameſning a Felon to publick Juſtice; And they are of three kinds in reference to the Perſon that cauſeth it: V. poſt. 107. Keeling 45. 77. Stamford, P.C. 30, 31, 32

1. In the Party himſelf:

{ Breach of Priſon.
{ Eſcape.

2. In the Officer or Perſon that permits it: And then,

{ Voluntary.
{ Involuntary.

3. In a Stranger, that is Reſcue.

1. Breach of Priſon.

At Common Law, it ſeems all breach of Priſon, Felony; but by Stat. 1 *E.* 2. *nullus de cætero, qui priſonam fregerit, ſubeat Judicium vitæ vel membrorum pro fractione priſonæ, niſi cauſa, pro qua capt' & impriſonat' fuerit, tale Judicium requirit.* V. Inſt. 589. poſt. 109.

And herein these things are considerable:

1. Who may arrest or imprison?
2. What a Prison?
3. What breaking a Prison?
4. What a Cause that requires a Judgment to make this Felony?

Arrest.

1. WHo may arrest or imprison? This is either

1. By a private Person.
2. By a publick Officer.

1. Arrest by a private Person, and that two kinds.
1. Either commanded and enjoined by Law.
2, Or permitted and allowed by Law.

Arrest commanded by Law: C. P. C. 53.

1. Persons present at the committing of a Felony must use their endeavours to apprehend the Offender, otherwise they are to be fined and imprisoned.

Hence it is, that if a Murder be committed in the Day in a Town not inclosed, the Township shall be amerced; if in a walled Town, be it Night or Day, the Town shall be amerced if Offender escape. Stat. 3 *H.* 7. 1. St. P. C. 29.

So

So it ſeems if one ſtrike another dangerouſly, though Death hath not yet happened.

C. P. C. 52. 2. Upon Hue-and-Cry well levied, every Man may and muſt arreſt the Offender upon whom it is levied, by Stat. *Wincheſter*: And want of purſuit thereof is puniſhable by Fine and Impriſonment.

The manner of levying Hue-and-Cry is, where a Felony is committed, or a dangerous ſtroke given, reſort to the Conſtable, declare the Fact, deſcribe the Party, and the way he is gone, who thereupon is to raiſe the Town, be it by Night or Day, and to give the next Conſtable warning, and he the next.

3. In aid to an Officer that hath a lawful Warrant in Fact, or in Law, to arreſt a Malefactor.

And in theſe Caſes it ſeems it is in the power of ſuch private Perſon to break the Houſe, if upon demand he cannot be admitted to take the Offender. 7 *E*. 3. 16.

Dal. c. 170. V. Cook. Jur. Courts 177. *Videtur*, 1. *Sur felony fait & juſt ſuſpicion aſcun poit arreſter*. 2 E. 4. 8.

2. *Sur Arreſt dt' ameſner al Common Gaol,* 20 E. 4. 6. *ou deliver al Conſtable,* 10 E. 4. 17.

2. A permiſſive Arreſt by a private Perſon:

If a Felony in Fact be committed, and a private Perſon ſuſpect another upon probable cauſe, he may be arreſted, though in Truth innocent: And theſe may be probable Cauſes:

Hue-and-Cry levied:

§. Company with the Offenders;

§. Goods in his Cuſtody;

§. Living vagrantly;

§. Common Fame.

But upon ſuch Suſpicion he cannot break open the Door of a Houſe, but may enter, the Door being open. C. Jur. Courts 179.

The Perſon arreſted by either of theſe Means by a private Perſon, muſt be brought to the Conſtable; and if Conſtable be not to be found, to a Juſtice; and in caſe of a Felony known, put in the Stocks or Common Gaol till he be brought to a Conſtable. Dal. fo. 4;8.

2. Arreſt

2. Arrest by a publick Officer without Procefs of Law.

Nota, Whatfoever a private Perfon may do in this Cafe, an Officer as a private Perfon may do.

Now thefe Officers,

1. Conftable.

If Complaint be made to a Conftable of Felony committed, or of a dangerous blow given, though the Party not dead; or in cafe there be an affault upon the Conftable, or in cafe of any other breach of the Peace, the Conftable may imprifon the Party in the Stocks, in the Gaol, or in his Houfe, till he can bring him before a Juftice of Peace.

But if it be a bare breach of the Peace, unlefs it be in his view, he cannot arreft the Party; but Complaint muft be made to a Juftice of Peace, for the Conftable is but a Confervator, not Juftice of Peace, unlefs Felony be done.

If a Conftable fee an Affray, and the Malefactors fly into another County before arreft, he may purfue

ſue them and arreſt them there, and then he muſt bring them before a Juſtice of that County, where arreſted.

But if the Eſcape was after arreſt, then he may retake them in another County, and bring them to the firſt.

He may break open Doors to take an Offender, where Felony committed, or a dangerous wound given. Dalt. c. 127.

2. By a Juſtice of Peace, who upon complaint may iſſue out his Warrant to apprehend the Party.

1. A general Warrant to ſearch for Felons or ſtoln Goods, not good. C. Jur. Courts 177.

2. If a Juſtice hath cauſe of ſuſpicion, he may arreſt as a common Perſon, not as a Juſtice.

3. Upon Complaint of a Felony committed, and where doubt may be of apprehending the Offender, in aſſiſtance of the Party ſuſpecting, he may grant his Warrant to the Conſtable to apprehend the Party; but the Party ſuſpecting ought

ought to be present, because it is his arrest.

But by vertue of such Warrant, Doors cannot be broken up.

4 But at the Sessions the Justices may award a *Capias* against the Person indicted, and by vertue thereof the Sheriff may break open Doors.

A Party being apprehended by such Warrant . is either to be committed, bailed, or discharged.

The Commitment by a Justice, ought to be to the Common Gaol, by the Stat. 23 *H.* 8. *c.* 2. and the *Mittimus* ought to be,

Co. M. Car. Stat. 1 E. 2. V. 2 Inst. 591.

1. Under Seal, and in the Name.
2. Contain the Cause.
3. Have an apt Conclusion, *viz.* there to stay till delivered by Law, otherwise the Warrant void.

C.P.C. c. 100. fo. 209.

And note, That a Person committed for Treason, Felony, or other Crime, cannot be discharged till

till indicted and acquitted, or *Ignoramus* found, or discharged by Proclamation, or by the King's Bench upon *Habeas Corpus*.

N. B. A Warrant or Mittimus to answer to such Things as shall be objected against him, is utterly void. 2 *Inst.* 591.

Bail.

Bail.

IN order to the consideration of Arrests and Escapes, here fit to consider of Bail and Mainprise in Cases of Felony.

1. What Bail is?
2. In what Cases?
3. By whom?

1. Bail are Sureties taken by a Person authorized, to appear at a Day, and to answer and be justified by the Law.

The difference between Bail and Mainprise is, That Mainpernors are only Surety; but Bail is a Custody; and therefore the Bail may reseize the Prisoner if they doubt he will fly; and detain him and bring him before a Justice; and the Justice ought to commit the Prisoner in discharge of the Bail; or put him to find new Sureties: The like may be done by the Justices in case of insufficient Bail.

If a Justice of Peace take insufficient Bail, and the Party appear not, the Justice finable by Justice of Gaol-Delivery.

The sufficiency of the Bail in respect of their number, two at least; and those Subsidy Men in case of Felony.

And in respect of the Sum, forty pounds at least.

Bail is either in a certain Sum, or *corpus pro corpore*; in which case the Offender not appearing, the Surety shall not be executed, but only fined. 29 *Assis.* 44.

2. In what Cases?

1. Generally; To refuse Bail where the Party ought to be bailed, the Party offering the same, is finable as a Misdemeanor;

§. And admitting Bail when it ought not, is punishable by the Justice of Gaol-Delivery by Fine, or punishable as a negligent Escape at Common Law, *de quo infra.*

2. Particularly; At Common Law, Bail in all Cases but Homicide; But now the Stat. *Westm.* 1. *c.* 15.

directs in what Cases bailable, and what not?

At this Day, in all Offences below Felony, the Party accused is bailable, unless

1. Ousted by that Statute, or some other Statute.

2. Unless Judgment be given.

Crom. 154. If a Person be brought before a Justice, if it appears no Felony be committed, he may discharge him; but if a Felony be committed, though it appears not that the Party accused is guilty, yet he cannot discharge him, but must commit or bail him.

The cases of Felony wherein the Parties are not bailable, are

1. In respect of the hainousness of the Offence.

1. In a Charge of Treason against the King's Person.

§. Counterfeiting the Seal;

Dal. c. 161. §. Falsifying Money.

2. Arson, or burning Houses.

3. In a Charge of Homicide.

1. In case of a Charge of Murder, Justices of Peace cannot bail, but the

the King's Bench may; but do not in discretion, for the Stat. *West.* 1. extends not to that Court. Dal. c. 161. V. C. super. Stat.

2. In case of Manslaughter, tho' it be but *se defendendo*, and so appear to the Justices of Peace, they cannot bail the Party accused.

1. If he confess the Fact upon Examination. Dal. c. 161.

2. If taken with the manner, if apparently known or manifested he killed another.

But if it be a *non liquet* that he is the Person, and the Charge but Manslaughter, there it seems they may bail.

So if he have given a dangerous stroke, he may be bailed till the Party dead.

But such bailment where Manslaughter or other Felony is committed, must be

1. By two Justices, one of the *Quorum.*

2. After Examination, *&c.* 3 H. 7. c. 3. St. 1 & 2 Ph. & M. c. 13.

And these be all the Persons excluded from bail simply, in respect of the nature of the Offence: Hence

C. West. 1. c. 15. 1. All Acceſſaries before or after any Offence, bailable; but if the Principal be attainted, and Acceſſary indicted, he ſhall not be bailed
St. P.C. c. 18. until he hath pleaded to the Indictment.

2. Perſons indicted of Larceny before the Sheriff, if of good Name.

3. Impriſonment for a light ſuſpicion, if of good Name.

4. Indicted or accuſed of petty Larceny only.

5. Appellee of Approver after death of Approver.

6. Accuſed for Treſpaſs, for which a Man ought not to loſe Life or Member, if bail not taken away by a ſubſequent Stat.

Dal. c. 161. f. 421. And hence alſo a Party indicted for Burglary or Robbery may be bailed.

2. As bail is ouſted in ſome Caſes, in reſpect of the greatneſs and conſequence of the Offence charged, ſo it is in reſpect of the Notoriety of the Offence: For Bail is, when *ſtat indifferenter*, whether the Party be guilty or no: But when that indifferency

ferency is removed, the Offender otherwise bailable is become not bailable.

1. If a Person be Attaint by Utlary of any Felony, yet if the Defendant comes in and pleads in avoidance of the Utlary, be it in Appeal or Indictment, the King's Bench may bail him. West. 1. c. 15.

2. If he be convict by Verdict or Confession of any Felony, he is not bailable. Dal. c. 166.

But if a Man be convict of Manslaughter *se defendendo*, the Justices of *B. R.* or Gaol-Delivery, or special Writ, may bail him, but not Justices of Peace: So if he have a Charter of Pardon. Dal. f 422.

3. He that becomes an Approver cannot be bailed.

4. He that abjures cannot be bailed.

5. He that's taken with the manner, not bailable; and consequently neither he that's taken freshly upon Hue-and-Cry. *Bridges's* Case. Justice of Peace fined 40 *l.* for bailing such.

6. He that breaks Priſon not bailable.

7. Open and notorious Thieves not bailable.

But he that is taken for a light Suſpicion bailable.

But if the Preſumption be ſtrong, or the Defamation great, the Juſtices may refuſe to bail him: This lies in diſcretion.

8. Thoſe that are appealed by Provers, unleſs

1. The Prover die.
2. The Prover wave his Appeal.
3. Unleſs he be of good Name.

And the reaſon hereof, becauſe when the Approver appeals another, he confeſſeth himſelf guilty, and therefore induceth a Preſumption of guilt in another.

But this concerns not Juſtices of Peace, becauſe no Man can become Approver before them, becauſe they cannot aſſign a Coroner; but they may take the Confeſſion by way of Evidence.

But a bare Indictment or Appeal did not induce such a Presumption that may hinder the bailing of a Person otherwise bailable. V. Stat. *West.* 1. *c.* 25.

But in Appeals of Death the Court in discretion admit not the Defendant to bail but upon weighty Cause. St. P. C. 18.

If the Party be acquitted within the Year upon Indictment, he is not to be discharged, but remanded or bailed at discretion, that an Appeal may be prosecuted against him. 3 *H.* 7. *c.* 1.

This Statute extends only where the Party indicted of Murder is acquitted, not where found guilty of Manslaughter, or se defendendo, &c. V. Keeling's Reports.

5. Who may take bail, or bail Offenders?

Bail was taken either *virtute brevis*, or *ex officio*.

1. Bail taken *virtute brevis*, that was either General or Special.

The general Writs.

Homine replegiando.

Habeas Corpus in the King's Bench.

Writ of Mainprise; this was directed to the Sheriff, commanding him to deliver by the Mainprise of

twelve, the Party indicted before him.

But now by Stat. 28 *E.* 3. *c.* 9.
t.P.C. 77. these Inquests before Sheriff are taken away, and consequently the Writ of Mainprise.

Special Writ, as where a Party convict of Manslaughter *se defendendo*; a Special Writ to certifie the

2. Bail *ex officio.*

1. The King's Bench, who have a higher Power than any other Power.

1. They may, either in case of an Original Suit, by Indictment or Appeal before them, or upon an Indictment or Commitment returned to them, by *Habeas Corpus* or *Certiorari*, bail where another Court cannot:

In case of Murder. *B.* Mainprise, 60, 63. *&c.*

In the Cases prohibited by Stat. *West.* 1. *c.* 15. V. *Coke ibid. verb. Viscounts, & autres verb ne soient replevisable.*

2. Justices of Gaol-Delivery, who may bail in Cases where Justices of Peace

Peace cannot, if it be of a thing within their cognizance:

§. As a Perſon convict of Manſlaughter *ſe defendendo*;

§. Or a Perſon convict of Manſlaughter that hath a Pardon to plead.

3. Juſtices of Peace.

§. 1. They cannot bail in any Caſe, but where they have cognizance of the Cauſe; therefore if taken upon Proceſs of Rebellion out of Chancery, they cannot bail.

2. The Statutes that give Power to Juſtices of Peace to bail in caſe of Felony, are 3 *H.* 7. *c.* 3. 1 *&* 2 *Ph. & Ma. c.* 13. upon which two kinds of bailments.

1. Upon the firſt Accuſation, and before Examination, and that doubtleſs muſt be done,

1. By two Juſtices, whereof one of the *Quorum.*
2. After Examination taken concerning the Offence. Cr. 196.

2. After commitment: And though ſome Opinion be, that he may be bailed by one Juſtice, yet it ſeems

ſeems otherwiſe; for the Stat. of 1 *R.* 3. that gave power to one, ſtands repealed by 3 *H.* 7.

3. After Indictment and Proceſs thereupon iſſued in caſe of Treſpaſs or Miſdemeanor, or Penal Statute, not prohibiting bail, he may be bailed by two Juſtices, whereof one of the *Quorum*; and by ſome by one Juſtice, and thereupon may grant a *Superſed.* to the *Exigent.* But it ſeems this holds not upon a Proceſs upon Indictment of Felony. *Quære.*

4. The Sheriff, Baily, or Officers which was of Indictment before them: But theſe are removed from that Power, as it ſeems by the Stat. 22 *E.* 3. *c.* 9.

1 *E.* 3, 4. *c.* 3. whereby they are not to make Proceſs, but to remove them to the Seſſions of the Peace.

Rumper

Rumper Prison.

Vide ante 87. Keeling 45. & 77.

NOw having considered the Persons that may arrest and bail, it makes way to consider the Offence against such Arrest or Imprisonment, by breaking such Prison, &c. And herein ensues the second Consideration.

2. What a Prison within this Statute?

1. The Stocks.
2. The Prison of a Lord of a Franchise.
3. The Custody of any that lawfully arrests, or the House of the Constable, or other Person where detained.
4. The Church, where a Person abjuring is.
5. The Prison of the Ordinary, which is now ousted. Stat. 23 *H.* 8. *c.* 11.

3. What

3. What a breaking?

If the Prison be fired without th[e] privity of the Prisoner, he may law-fully break it to save himself.

2. If Gaoler do voluntarily per-mit him to escape, Felony in the Gaoler, not in the Prisoner; but if negligent, Felony in the Prisoner, and Misdemeanor in the Gaoler.

3. If Prisoner under Custody be rescued, or Prison broke by Stran-gers without his procurement, no Felony in the Prisoner.

4. Going out, the Doors open, no Felony; for the Statute requires an actual breaking. V.2 Inst.590.

4. *Nisi causa; tale judicium*, &c.

V.2 Inst. 591. 11 H. 4. 11. Com. 401. Cole's Case.

1. If *A.* mortally wound *B.* and is committed, and he break Prison, and *B.* then die, no Felony.

2. If a Felony, made by a subse-quent Statute, and an Offender committed therefore, break Prison, Felony.

3. Com-

3. Committed for suspicion of Felony, yet if a Felony done, breaking Prison, Felony. V.2 Inst.592.

4. If the Offence for which the Party was committed appear not by matter of Record, necessary a Felony be done, else breach of Prison, no Felony.

But if it appear by matter of Record, and the Party taken by *Capias*, if he break Prison, Felony, though no Felony done,

5. If Felony was done, yet breach of Prison no Felony, unless a lawful *Mittimus, de quo supra.*

6. The Indictment for the breach must be Special, that it may appear he was committed for Felony.

5. *Tale Judicium requirit.*

1. Breach of Prison turns into Felony only, though the Party were committed for Treason. V.2 Inst.589. ante 87, 88. So adjudged 10 H. 6.& V. 2 Inst. 591.& Cro. 1 Car.& 1 Jones. Benstead's Case.

But if a Prisoner break a Prison wherein Traitors are, to let out the Traitors, this is Treason.

2. A

2. A Man imprisoned for Pe[...] Larceny, or *Se defendendo*, brea[...] Prison, no Felony.

3. If a Prisoner break Prison, [...] may be arraigned of that before h[...] be convict of the first Felony.

But a Gaoler permitting a volun[...]tary Escape, shall not be arraigned till the Prisoner be first attaint; for if the Prisoner be acquit, the Escape [...] dispunishable.

Dal. c. 159.

Escap[...]

Eſcape in the Party.

NOta, If a Perſon eſcapes before arreſt, not puniſhable in him as Felony, but for the Flight he forfeits Goods when preſented.

In caſe a Man ſlain in the Day, if the Offender eſcape, Townſhip amerced. *Vide ſupra.*

Iſſint ſi ſoit dangereuſment wound, 3 H 7. c. 1. *Et ſi ſoit vill immure ſer. amerce, ſoit ceo in jour ou nuit.* 3 E. 3. Coron. 299. Stat. Winton cap. 4.

Eſcape in the Officer, or him that makes Arreſt.

THis is either in caſe of Arreſt,
1. By a Stranger.
2. By an Officer.

If a Stranger arreſt a Man for Felony, or ſuſpicion thereof, and deliver him over to four others, and they receive him and let him go at large, this an Eſcape in both; for the firſt Man ſhould have delivered him to the Conſtable; and the latter ſhould not have let him go at large.

And the ſame Law ſeems to be for an Eſcape by a Stranger that hath a Priſoner in his Cuſtody, as for an Officer in caſe of Eſcape voluntary or negligent.

Escape by an Officer.

Escape of an Officer.

1. Negligent.
   1. Bailing a person not bailable, through ignorance, by one that hath power to bail, a negligent Escape.

   But it seems if done by a Gaoler a voluntary Escape; because he hath no such power.
   2. The ordinary punishment of a negligent Escape.
      1. Of a party attaint 100 *l.*
      2. Of a party indict 5 *l*
      3. Of a party not indict, at discretion.
   3. For insufficiency of the Gaoler, the Sheriff must answer for negligent Escapes.

4. A Gaoler *de facto*, though not *de jure*, must answer for Escapes.

5. If after a negligent Escape the Gaoler retake him upon fresh Suit before he be punished, it excuseth.

If the Constable bring a person to Gaol, the Gaoler refuseth him, the Villain shall be charged, and Gaoler fined.

2. Voluntary Escape.

Stat. 14 E. 3. c. 10.

1. Hath the same Crime that the person permitted to escape stood committed for, *viz.* Treason or Felony.

2. But this is in the immediate person that permits it; and therefore though civilly the Sheriff must answer for offences of Gaoler, yet not criminally.

3. There must be a Felony really done, and a Commitment by a lawful Warrant.

4. If within the year the Prisoner be acquitted upon Indictment, yet a voluntary Escape is punishable as Felo-

Felony, because wife intitled to her Appeal.

5. The Escape if voluntary punishable *ut supra*, though the Prisoner were not indicted. Dal. c. 159. Dy. 99.

Rescue.

An Indictment of Rescue excepted to, because it wanted the Words *vi & armis*, but held *Rescussit* implies it. Cro. Jac. 345, 472.

1. A Hinderance of a person to be arrested that has committed Felony is a Misdeameanor, but no Felony.

2. But if the party be arrested and then rescued, if the arrest was for Felony, the Rescuer is a Felon; if for Treason, a Traitor; because they are all Principals.

But he shall not be arraigned till the Principal attainted; and if the Principal die before attainder, the Rescuer shall be fined and imprisoned.

3. There must be a Felony really done, and a lawful Commitment.

N. *Rescue hors de custody de Constable*, &c. *est Felony, licet ne fait amesne al Gaol.*

Note, The Diversity in 1 *Inst*. 161. where the Arrest is upon a Warrant of Record, and where upon a Warrant or Authority in Law.

Felonies by the Statute.

C. P. C. c. 4.

3. HEn. 7. c. 14.
Imagining and conſpiring to kill the King, or any of his Council.

§. Clergy not taken away.

1 *Jac. c.* 12.

§. Witchcraft, *de quo ſupra.*

§. 25 *H.* 8. *c.* 6. revived by 5 *El. c.* 17.

Buggery with Man or Beaſt.

§. Without benefit of Clergy.

Debet eſſe Penetratio as well as *Emiſſio.*

12 Rep. 36. and 3 Inſt. 58

In this and Rape *carnaliter cognovit.*

13 *E.* 1. *c.* 34.

12 Co. the Caſe of Buggery in this and Rape, all that are aiders or preſent are Principals.

Rape: This was Felony at Common Law; then by Stat. *Weſtm.* 1. *c.* 13. made but a Miſdemeanor; then by this Statute reſtored to Felony again.

3 Inſt. 59. poſt. 186.

And hence it is that it is not inquirable in a Leet, becauſe though now Felony, yet it loſt its nature by *W.* 1. *c.* 13.

C. ſur ceo Stat. 3 Inſt.

Nul Appeal done al party.

13 *E.* 3. *Coron.* 169.

If the woman be under ten years, then though ſhe conſent, yet by Stat. 18 *El.* *c.* 6. it is a Rape; if above ten years, if ſhe conſent not, a Rape, though ſhe conſent after.

But in ſuch caſe of a ſubſequent conſent, the Stat. 6 *R.* 2. *c.* 6. gives the Appeal to the Husband; if none, to the Father, &c.

Clergy taken away by Stat. 18 *El.* *c.* 7. upon Conviction by verdict, or Confeſſion, or utlawed.

Ceſtuy que ayd in Rape eſt Raviſtor. 11 H. 4. 13.

3 *H.* 7. *c.* 2.

Taking a woman againſt her will and marrying her, Felony.

1. Such Maid, Widow, or Wife muſt have Lands, Tenements, or Goods, or be Heir Apparent.

2. She muſt be taken againſt her will.

3. She muſt be married or defiled.

4. Extends not to taking a Ward or Bondwoman.

Nota,

Nota, The taking away in one County, and marrying in another, indicted where married; and they may enquire of the forcible taking. 2. Privy to the marriage, but not to the force, not Guilty. 3. Marriage with consent not excusing so long as she is under force. 13 *Car. Fulwood's* Case.

All Accessaries before or after made Principals by this Act.

Clergy taken away by Stat. 39 *El. c.* 2.

5 *H.* 4. *c.* 5.

Malicious cutting out Tongue or putting out Eyes, Felony.

Clergy not taken away.

Extends not to cutting off Ears.

8 *H.* 6. *c.* 12

Stealing, carrying away or avoiding Records, Felony. And

The Judges of either Bench enabled to hear and determine the same.

Accessaries before made Principals.

§. Clergy allowable.

5 *H.* 4. *c.* 4.

Multiplication of Gold or Silver, Felony.

1 *H.* 7. *c.* 1.

Hunting unlawfully in Forests, Chases, or Warrens with painted faces by night, and rescuers, *viz.* other than the party arrested, Felony.

31 *El. c.* 4.

Imbezilling the King's Armour, *&c.* Felony.

Qualifications.

1. Ought to be impeached within a year.

2. Offender loseth Lands but during life.

3. No Corruption of blood.

4. Wife loseth not Dower.

5. Defendant admitted to proof.

3 *Jac. c.* 4.

Subjects passing Sea to serve forreign Prince, not having taken Oath of Obedience:

No Corruption of blood.

Offender may have Clergy.

Articuli super Cartas c. 2.

Purveyors Felons in certain cases;

§. They may have Clergy.

39 *El. c.* 17.

Wandring Soldiers Felons in certain cases.

§. Excluded of Clergy.

18 *H.* 6. *c.* 19.

Soldiers retained, as is prescribed in the Act, departing from their Captains without licence.

§. 2 *E.* 6. *c.* 2. *ad idem.*

§. Clergy excluded.

1 *Jac.* 12.

Marrying a second husband or wife, the former living, Felony: except cases following: Keel. 27, 79, 80, 104.

1. The man under fourteen, or the wife under twelve, at time of first marriage, and not agreeing after first Espousals, may marry a second husband or wife. 3 Inst. 88.

2. A man or wife absent above seven years, second marriage no Felony: If beyond Sea, though notice of

1 Jac. 11. of life; If in *England*, then without notice.

V. 3 Inst. 88. Cro. Car. Porter's Case. Keel. 79, 80. Mr. Midleton's Case.

3. After a Divorce, though *a mensa & thoro* only.

4. After a nullity declared of the former marriage by Ecclesiastical Court,

Offenders have Clergy.

1 *Jac. c.* 31.

§. For going with a Plague sore, but this discontinued.

14 *E.* 3. 20.

Gaoler compelling Prisoner, by Duress to become Appellor, Felony, whether the Appellees be acquitted or not.

3 *H.* 5, *c.* 1.

Coining, or bringing in Gally half pence, Suskins, or Dodkins.

§. And 2 *H.* 6. *c.* 9. payment of blanks,

Offender hath Clergy.

17 *E.* 3. *n.* 15.

Transportation of Silver, or Importation of false money made Felony,

Offender hath Clergy.

11 *H.* 6. *c.* 15.

Expor-

Exportation of Wooll or Wooll-fells, other than to the Staple of *Calais*.

37 *E* 3. 19.

Stealing Falcons, &c. or concealing the ſame after Proclamation, Felony,

Offender hath Clergy.

3 *H*. 6. *c*. 1.

Congregation of Maſons to prevent Statutes of Labourers;

§. But this obſolete; by the Statute 5 *El*. the Acts to which it relates are repealed.

27 *El*. *c*. 2.

Receiving, retaining, or maintaining a Jeſuit or Popiſh Prieſt knowingly,

Clergy excluded.

35 *El*. *c*. 1.

Felony refuſing to make Abjuration, or after Abjutation not to depart, in ſome caſe

Clergy excluded.

1 & 2 *Ph*. & *M*. *c*. 4.

Egyptians above fourteen years remaining here a month. St. 12 Ann. Seſ. 2. c. 23.

§. And 5 *El*. *c*. 20. takes away Clergy.

39 *El*.

V. St. 12 An. Sess. 2. c. 23. a Repeal of former Stat.

39 *El. c.* 4. 1 *Jac. c.* 7. 25.

Dangerous Rogue adjudged to the Gallies; and returning without licence, Felony:

§. But Offender hath Clergy:

§. But branded Rogue Felon, and no Clergy.

5 *El. c.* 14.

V. Post 151.

Forging a Deed after a former Conviction.

C.P.C. f. 172.

If a man be convict or condemned of publishing a forged Deed, and after he forge a Deed, this is Felony.

If the offence were after a former, but before conviction thereof, no Felony.

Clergy ousted.

8 *El. c.* 3.

Sending sheep beyond Sea after a former conviction,

Clergy allowed.

33 *H.* 6, *c.* 1.

Servants after decease of their Master, riotously spoiling Goods, &c.

Offenders shall have Clergy.

21 *H.*

21 *H.* 8. 7.

Servant imbezilling Goods of their Masters delivered to them, Felony; Vide Stat. 12 Ann.

But the Stature of 27 *H.*8. *c.* 17. that took away Clergy being repealed by 1 *E.* 6. *c.* 12. they may now have Clergy.

22 *H.* 8. *c.* 11. 2 *&* 3 *Ph. & Ma. c.* 19.

Cutting Powdike, Felony,
Offender hath Clergy.

43 *El. c.* 13.

Detaining persons in *Cumberland,* &c. against their will, and giving or receiving blackmail, &c. Felony,
without Clergy,

Note, By Stat. 3 H. c. 4. compassing to kill the King or any of his Council is Felony, Vide ante 17.

Mispri-

Misprisions.

NOW we come to Offences Criminal, but not Capital; and those of two kinds:

1. Offences by Common Law:

2. Offences against special Statutes.

Offences by Common Law not Capital, are either greater Offences or lesser:

Greater; and those come under name of Misprisions, which again are of two sorts:

Negative, in not doing that they ought, or of Omission.

Positive, in doing some great Misdemeanor they ought not.

Misprision of Treason.

The Negative Misprisions.

1. MIsprision of Treason.
All Treason includes Misprision: The Concealing of any Treason, is declared Misprision only by the Statute of 1, 2 *Mar. c.* 10. *que indure auxi misprision.* 2 R. 3. 9. C. P. C. c. 3.

But this in case of bare knowledge; for if knowledge and Assent, it is Treason: and though the Treason be by Statute, yet the concealing thereof is Misprision of Treason.

Every man therefore that knoweth a Treason, must with all speed reveal it to the King, his Privy Council, or other Magistrate.

He that receives and comforts a Traitor knowingly, be it a counterfeiter of Coin or other, is a Principal Traitor, and not only guilty of Misprison. *Abingdon*'s Case against the Opinion in *Dyer* 296. *Conier*'s Case. C. P.C. c. 64. fol. 138. V. ante 20, 21.

The

The Judgment in caſe of Miſpriſion of Treaſon is Impriſonment during life, forfeiture of Goods, forfeiture of profits of Land during life.

Nota, *Si un conuſt un que ad counterfeit coigne, & ne lui diſcover, eſt Miſpriſion de Treaſon. Mes ſi un ſolment utter counterfeit coigne, ſciant ceo eſtre counterfeit, neſt Miſpriſion de Treaſon, mes ſerra Fine & Impriſon. Iſſint reſolve a Newgate.* 1661.

Note, Nothing is Miſpriſion of Treaſon, but the knowing of Treaſon, and concealing it. Co. Pl. Cor. 36.

Miſpriſion

Misprision of Felony.

2. MIsprision of Felony is either by Common Law, or by Statute.

By the Common Law a concealment of a Felony, or procuring of the concealing thereof.

The Punishment.

1. If a common Person, Fine and Imprisonment.

2. If an Officer, as Sheriff, Coroner, Imprisonment for a year, and Ransom at the King's pleasure by Stat. *W.* 1. *c.* 9.

By the Stat. 3 *H.* 7. *c.* 1. 33 *H.* 8. *c.* 6. one knowing of an unlawful Assembly, and not discovering it within 24 hours.

Concealment of Jurors, *v.* Stat.

Theft-bote.

7. Inst. 134.

3. THeft-bote, which is more than a bare Misprision of Felony, and is where the Owner doth not know the Felony, but takes his Goods again, or other Amends, not to prosecute.

But taking the Goods again barely no offence, unless he favour the Thief.

The punishment hereof is Ransom and Imprisonment.

Misprisions

Misprisions Positive or of Commission.

1. DIscovery by one of the grand Inquest of the Persons indicted, or Evidence against them, Misprision, punishable by Fine and Imprisonment, but no Felony, nor Treason. C. P.C. c.46.

2. A person disswading Witnesses from bringing in Evidence against a Felon is no Accessary, but a great Misprision, punishable by Fine and Imprisonment. C. P.C. c. 64.

3. Reproaching a Judge, assaulting an Attorney against him, or abusing a Juror that gave verdict against him; a great Misprision, punishable by Fine and Imprisonment.

4. Rescuing a Prisoner from the Bar of the Courts of *B. R. Canc. B. C.* or *Exchequer*, a Misprision for which the party shall lose his Hand, Goods, Profits of Lands during Life, and perpetual Imprisonment.

5. If a man strike sitting the four Courts at *Westminster*, in the pre-

ſence of the Court, the like Judgment.

6. If in preſence of thoſe Courts, or before Juſtices of Aſſize or Oyer and Terminer, a perſon draw his Sword upon any Judge or Juſtice, though he ſtrikes not, or ſtrike another, like Judgment.

7. By Stat. 33 *H.* 8. *c.* 12. ſtriking in the King's preſence, drawing blood; loſs of hand and perpetual Impriſonment, Fine and Ranſom.

8. By Stat. 14 *El.* *c.* 3. forging of Money not current, Miſpriſion of Treaſon.

9. Stranger uttering falſe Money made within this Realm, knowing it Counterfeit. 3 *H.* 7. 10.

10. A Lord of Parliament departing from Parliament. 3 *E.* 3.

Maihem.

V. 4 Co. Hudson's Case And post 180. Poulton de Pace. 15.

AND hither we may refer Maihem, which though it be a particular Crime, for which Appeal lieth, yet it is not Felony of death.

Cutting off the hand, or striking out a tooth, Maihem, but not cutting off the ear. C. P.C. c. 40.

The Judgment is only Fine and Damages; and therefore if recovery in Trespass, it is a good barr in Appeal of Maihem.

Note, By Stat. 22, 23 Car. 2. c. 1. If any Person or Persons of Malice forethought do cut out or disable the Tongue, put out an Eye, slit the Nose, cut off the Nose or Lip, or cut off or disable any Limb or Member of any of the King's Subjects, with Intention in so doing to Maim or disfigure them; such Persons and their Counsellors, Aiders and Abettors shall suffer as in Case of Felony, without Benefit of Clergy.

Offences not Capital.

OFfences of an Inferior nature: they are either such as are committed by an Officer.

Neglect of Duty;
Bribery,
Post. 151. Extortion.

Or such as refer to a common Person, without relation to Office, and those reducible to three kinds:

1. Breaches of publick Peace, and therein

1. Of Affrays.
2. Of Riots.
3. Of Forcible Entries.
4. Forcible Detainers.
5. Barretries.
6. Riding armed, *&c.*

2. Deceipts and Cozenage.
3. Nusances, *viz.*

Decay of Bridges.
Decay of High-ways.
Inns and Ale-houses.

Breach of the Peace.

Note, Whatever is cause of being bound to the good Behaviour, is a Breach of the good Behaviour. Palm. 129.

I. *Affrays.*

IF weapons drawn, or stroke given or offered; but words no Affray: menace to kill or beat, no Affray; but yet for safegard of Peace, Constable may bring them before Justice.

In Affrays considerable,

1. What a private man may do?

Private persons may stay Affrayers till heat over, and deliver them to Constable.

If person hurt another dangerously, private person may arrest the Offender, and bring him to Gaol or next Justice.

Dal. c. 8. Lamb 134. Br. Faux Impris. 35, 44.

2. What by a Constable.

   1. Affray in presence of a Constable, he ought to do his endeavour to suppress it, otherwise finable.
   2. If an Affrayer fly to a house, or if made in a house, Con-

stable may break open house to preserve peace, or take the Offender.

3. If in Affray assault be made upon the Constable, he may strike again, or imprison Offender.

4. Constable may in such case imprison till he find surety of Peace.

5. But it seems if Affray past, and not in view of Constable, he cannot imprison without warrant of the Justice, unless Felony done, or like to be done.

3. What by a Justice?

1. In his presence, the same power that a private person or Constable, and may imprison till surety of Peace found; the like upon Complaint.

V. Pal. 129.

2. If dangerous hurt, Justice may imprison till appear whether the party die or live, or bail the party.

The former, better discretion.

II. *Riots.*

II. *Riots.*

When above the number of two meet to do ſome unlawful act, and do act it; but if they meet and act it not, an unlawful Aſſembly, in power of Juſtices to ſuppreſs them. 13 *H.* 4. *c* 7.

A man for ſafeguard of his houſe againſt Maleſactors or Treſpaſſers, may aſſemble his Friends for his Defence.

But he cannot aſſemble to prevent a beating threatned in his preſence.

Riot recorded by one Juſtice upon view traverſable; by two not, becauſe purſuant to the Statute.

III. *For-*

III. *Forcible Entry.*

V. St. 5 R. 2. 15 R. 2. 8 H. 6. and 31 El. in Dalton.

Forcible Entry must be either,
Manu forti,
Furnished with unusual weapons,
Menace of life or limb,
Breaking open door:
Contra it seems if door only latched,
Ejecting forcibly the possessors.

V. Yelv. 90. Indictment on St. H. 6. for a forcible Entry.

Cum multitudine gentium, one may commit a Force, three at least a Riot.

IV. *Forcible*

IV. *Forcible Detainer.*

Menacing the Poſſeſſor to go out upon pain of loſs of life or limb.

Unuſual Weapons or Company.

§. Refuſing to admit the Juſtice to come in to view the Force.

Detainer with Force juſtifiable where party in poſſeſſion three years;

§. But though his Poſſeſſion lawful, yet if within the three years actually removed, though reſtored by the Juſtices, enables not a Detainer with Force.

But if the three years Poſſeſſion hath been by Force, then the laſt forcible Detainer puniſhable, and hinders not Reſtitution.

If a Diſſeiſee within the three years make lawful Claim, this an Interruption of his Poſſeſſion.

Reſtitution

Restitution.

1. By whom?

1. Justices *B. R.* may restore upon Indictment removed before them.

2. One Justice of Peace cannot restore upon an Indictment before them; nor Sessions of Peace, unless upon Indictment found at Sessions.

3. It seems Justice of Goal-Delivery, or Oyer and Terminer, cannot restore.

2. How?

Upon view.

Upon Indictment;

Must be sufficient,

Adhuc extra tenet.

If erroneous, may be superseded by the same Justice before executed: After it is executed, then Re-restitution in *B. R.* upon Indictment quashed.

V. Yelv. 90. Rex vers' Ford, Indictment on 8 H. *6.* for forcible Entry and Detainer; the grand Jury as to the Entry returned Ignoramus, and as to the Detainer Billa vera; and the Court not observing the difference awarded Restitution, which being removed by Certiorari into B. R. a Re-restitution was awarded, &c.

Resti-

Reſtitution ſtayed.
By Certiorari.
By quaſhing Indictment.
By pleading thereunto, which is nevertheleſs in diſcretion.

Reſtitution of ſtolen Goods, tho' ſold in Market Overt. V. Keel. 45 to 49. V. Stat. 31 El. c. 12. of ſtolen Horſes.

Reſtitution not to be in Robbery, unleſs the Jury find the freſh Suit. ibid 96.

Barretry.

V. *Barretry.*

VI. *Riding Armed.*

VII. *Going Armed.*

V. Stat. 20 *R.* 2. *c.* 1. 7 *R.*2. *c.*13. 2 *E.* 2. *c.* 3. Stat. *Northampton.*

Nusances.

Nusances.

V. 9 Co. Baten's Case.

BRidges Publick

Are not chargeable upon a particular Person, but *ratione tenuræ.*

But of Common Right repairable by the whole County.

The manner of Repairing directed by Stat. 22 *H.* 8. *c.* 5.

V. an Indictment for stopping quædam pars aquæ, and held ill, it should have been quædam pars Terræ aqua cooperta. 4 Co. Luterel's Case. Vide Cro. Jac. 324.

High-

V. ante 143.

Highways.

HIghways: Provisions,

1. For their enlarging and removing Trees within 200 foot of either side.

13 *El.* 1. *c.* 5.
5 *El.* *c.* 15.

2. For their Amending *vide* the Stat.

5 *El.* *c.* 13.
29 *El*, *c.* 5.
2 *&* 3 *P.* *&* *M* *c.* 8.

The Charge of repair of Highways lies of common right upon that Parish wherein they are, unless

1. A Special Prescription cast it upon another.

2. Unless the Owner of the Land, in which they are, inclose it, then it must be cast upon the Owner.

But they that have Ditches on either side ought to scour them. 8 *H.* 7. 5.

Inns,
Ale-houſes.
Bawdy-houſes.
Gaming-houſes.

Of Bakers. Vide Hob. 129. Pal 28. 393. 544.

Common Inns.

1. ANY Person may erect a Common Inn, so it be not *ad nocumentum.*

Vide Palmer. 367.

1. In respect of their multitude, when there are enough ancient Inns before.
2. In respect of the inconvenience of the Place or situation.
3. In respect of Disorders there permitted.

All which are common Nusances, and may be presented and fined.

2. He that erects a Common Inn and refuses to entertain Guests, may be indicted and fined for the same.

3. If a Common Inn, contrary to Statute, suffer Persons to tipple there as Ale-houses, he may be compelled to be bound; or may be suppressed as Ale-houses; or may be indicted at Sessions.

Ale-houses.

SEE for Ale-houses, the suppressing of them, and the punishing of tippling in them, 5 *E.* 6. *c.* 25. 1 *Jac. c.* 9. 4 *Jac. c.* 5. 7 *Jac. c.* 10. 21 *Jac. c.* 7. 1 *Car. c.* 4. 3 *Car. c.* 3.

An Ale-house-keeper suppressed according to the Stat. of 5 & 6 *El. c.* 25. by two Justices, whereof one of the *Quorum*, cannot be allowed but in open Sessions.

An Ale-house-keeper suppressed for the Offences 7 *Jac. c.* 18. 21 *Jac. c.* 7. for suffering tippling; or 7 *Jac. c,* 10. for selling less than is there directed, or 21 *Jac. c.* 7. for continuing drinking in another Ale-house, or 21 *Jac.* for being drunk, cannot be licenced in three Years, and if he be, such Licence void.

Stat. 6 *E.* 6. *c.* 25.

None to sell Ale, *&c.* unless licenced in open Sessions, or by two Justices, one of the *Quorum*.

Persons licenced to be bound by Recogn. not to keep unlawful Games, and for using good Order.

Recogn. return. next Quar. Sessions.

Process upon Recogn. at Sessions.

Persons unlicenced keeping Alehouse, imprisoned by two Justices, one of the *Quorum*, for three days, and till Recogn. given not to sell Ale.

Certificate of such Recogn. Conviction, and Fine 20 *s.*

1 *Jac. c.* 9.

Ale-man, Inn-keeper or Victualler suffering Inhabitant to sit tippling, forfeit 10 *s.* to the Poor.

Conviction before one Justice, *&c.* by two Witnesses.

Penalties levied by Constables and Churchwardens by Distress and Sale within six days.

In default of distress, Offender committed till payment, *per* Justice.

Constables, *&c.* neglecting to levy or certifie default of Distress, forfeits 40 *s.*

4 *Jac. c.* 5.

Person drunk forfeits 5 *s.* to be paid, within a week after Conviction, to the poor: If neglect, levy by distress, by Warrant from Justice: If not able to pay, commit to Stocks for six hours.

Constable neglecting Duty, forf. 10 *s.* to the use of the Poor.

Any Person sitting tippling, dwelling in the said Parish, forf. 3 *s.* 4 *d.* to poor, proved before Justice, levy *per* distress, and for want of distress, commit *per* Justice to House of Correction.

Second Offence, bound to good Behaviour.

Constables, *&c.* bound by Oaths to present Offences.

Punishment within six Months.

21 *Jac. c.* 7.

Former Act extend to Foreigners, as well as Inhabitants.

One Witness suffice to convict, or view of Justice.

Ale-house suppress, not licenced for three Years *per* Stat. 7 *Jac. c.* 10.

1 *Car. cap.* 4. Former Stat. extend to Inn-keepers and Taverns.

Offences not Capital by Statute.

OFfences not Capital, more particularly by Statute.

Forgery by Stat. 5 *El. c.* 13.

Vide ante 124. 2 Rol. abr. 26. 13 Co. Read and Booth's Case. & 3 Inst. Forgery of Deeds. 9 Co. in Lord Sanchar's Case.

Perjury and Subornation thereof, 5 *El. c.* 9. *Vide* 3 *Inst.* 167.

V. Siderf. 454. 1 Mod. 55. Latch. 232. 5 Co. Flower's Case. Hob. 52. Cro. Jac. 120. Palmer 535.

Champerty, Embracery and Maintainance, 32 *H.* 8. *c.* 9.

L 4 *In-*

Extortion, Vide Siderfin, le Roy vers. Cover. Indictment, quod colore Officii, he took 50 *s.* *&c.* Vide post. 208. in Informations.

V. Cro. Car. Fenn's Case.

Ingrossing, Forestalling, and Regrating. 5 E. 6. c. 14.

Salt Victual within Statute.

V. Cro. Jac. 214.

Apples and Cherries, *&c.* no Victual.

Malt seems not, but Corn and Grain expresly Victual, by 5 *Ed.* 6.

A Stranger, or Subject, bringing Victual into the Realm, may sell them in gross, but the Vendee cannot; neither may any Merchant buy within the Realm, and sell in gross.

Attempting to inhance the price of Merchandize, a kind of forestalling.

Selling Corn in the Sheaf unlawful.

Matters

N. B. By Stat. 13 *El.* the Stat. 5 *Ed.* 6. shall not extend to any Wines, Oils, Sugars, Spices, *&c.* or other Foreign Victual, except Fish or Salt,

Matters of Religion.

1. REviling the Sacraments, imprisonment, fine, and ransom. 1 *El.* 6. *c.* 1. repealed, 1 *M. c.* 2. revived 1 *El. c.* 7.

2. Not coming to Church to hear Common Prayer, by 5 *E.* 6. *c.* 1. subject to the Church Censures.

Nota, 3 *E.* 6. *c.* 1. settled a Book of Common Prayer; injoined the use: Refusing to use it, using other, or depraving it, Imprisonment for six Months for first Offence, twelve Months for second, during Life for third.

5 *E.* 6. *c.* 1. alters the Prayers, but applies the Penalty to the new Book.

Nota, repeal 1 *Ma.* that repealed 1 *Jac. c.* 25.

1 *El. c.* 2. enacts the use of the Book of 5 *El* 6. with some Alterations.

Any that,

1. Refuse to use it;

2. Use

2. Use another Form:

3. Deprave it.

§. If Spiritual, six Months Imprisonment, first Offence; one Year's Imprisonment, second Offence; Deprivation, third Offence.

If Lay, first Offence, twelve Months Imprisonment; second Offence, during Life.

Depraving Book of Common Prayer, first Offence 100 Marks; second Offence 400 Marks; third Offence forfeit Goods, and Imprisonment during Life.

8 *El. c.* 1. touching Consecrating Bishops.

Concerning repair to Church.

1 *El.* 2. Every Sunday and Holiday *sub pœna* 12 *d. per diem.*

Vide 12 Co. Ford & Sheldon's Case.

§. 23 *E. c.* 1. 20 *l. per mensem* for absenting; and if absent twelve Months upon Certificate, bound to good Behaviour.

V. 1 Rol. abr. 888. Palmer's R. Sir J. Webb's Case. & 2 Rol. R. m. Case. Cro. Jac. 480. 356. Pop. 180.

29 *El. c.* 2. Conviction of Recusancy.

35 *El. c.* 1. Penalty of disswading from Church; holding of Conventicles; commit to Prison without Bail until Conformity.

Non-

Nonconformity within 3 Months after Conviction, shall abjure the Realm.

Not departing, or returning, Felony without benefit of Clergy.

Submitting, discharged of the Penalty by this Act.

Relapsing, loseth the Benefit of the Submission. V. 1 Bulstr. Holt's Case.

Ten pounds *per mensem* for every Person retaining or relieving Recusant after Notice.

Cap. 2. Recusants not to remove five Miles from dwelling.

1 *Jac. c*. 4. Conformable Heir of a Recusant discharged: Third part disch. of Forfeiture.

Penalty of sending Children to Seminaries.

3 *Jac. c*. 4 & 5. Penalty for refusing Oath of Supremacy.

1 *El. c*. 1.

5 *El. c*. 1.

Of Obedience,

3 *Jac. c*. 4.

7 *Jac. c*. 6.

King's

King's Bench.

NOW we come to consider of the Proceedings against a Party for Felony; and therein,

1. Concerning the Jurisdiction or Court wherein Proceedings are to be had in Capital Causes; and those are principally,

V. 9 Co. Lord Sanchar's Case.

1. The King's Bench.
2. Justices of Gaol-Delivery.
3. Justices of Oyer and Terminer, and Assizes.
4. The Sheriff and Coroner.
5. The Lord Steward of the Houshold.

The King's Bench the Supream Court of Criminal Jurisdiction. It is a Court of Oyer and Terminer, Gaol-Delivery, and Eyre, in that County where it sits.

9 R. Sanchar's Case.

By the coming of the King's Bench into any County, during the sitting thereof in that County, all power and proceedings of Commissioners of Oyer and Terminer is suspended.

But

But a Special Commission of Oyer and Terminer bearing *Teste* in the Term may be granted; and King's Bench may adjourn, and then they may sit. C. P. C. p. 27.

Where the King's Bench proceeds upon an Offence committed in the same County, there need not fifteen Days between the *Teste* and Return of the *Venire facias*; But if they proceed upon a Cause removed by *Certiorari*, they must have fifteen Days. 9 Rep. Sanchar's Case.

Vide 1 And. 111, 112. post. 256.

Gaol-Delivery.

C. Jur. Courts, sub hoc titulo.

1. THE Justices of Peace ought to deliver the Indictments not determined unto these Judges, and they may arraign any Person in Prison upon them.

2. They may take Indictments against any Person in Prison, and so may Justices of Oyer and Terminer, and herein they have a concurrent Jurisdiction.

3. They may take a Pannel returned by the Sheriff without a Precept.

4. They may deliver by Proclamation Persons suspected, where there is no Evidence to indict them.

5. May award Execution of Persons in Prison utlawed before Justices of Peace.

6. May assign Coroner to an Appeal, and make Process against the Appellee in a Foreign County.

7. May punish those that unduly bail Prisoners. Stat. *de Finibus*, 1 & 2 *Ph. & Ma. c.* 13.

8. May

8. May deliver the Gaol of Persons committed for High Treason.

9. May receive Appeals by Bill against Persons in Prison.

10. By Stat. 9 *E.* 3. 15. must send their Records into the Treasury of the Exchequer at *Michaelmas*.

11. Others may be added to the former Commission by Commission of Association, or their power committed to fewer by *Si non Omnes*.

12. By Stat. 2 *&* 3 *Ph. & Ma.* c.18. a general Commission of Gaol-Delivery through the County, determines not a Special Commission granted in a Corporation, *&c.* parcel thereof.

13. By Stat. 1 *E.* 6. *c.* 7. the subsequent Commissioners of Gaol-Delivery, power to give Judgment upon such as were reprieved before Judgment by former Commissioners, and Process before any former Commissioners of Peace, Gaol-Delivery, Oyer and Terminer, or others, not discontinued by granting new Commissions.

If a Prisoner be bailed, he is yet in Prison to be arraigned before these Justices, for he is a Prisoner: Contrary in case of Mainprise. 21 *H.* 7. 33. 9 *E.* 4. 2. 39 *H.* 6. 27.

Cr. Jur. 226.

Although their Commission determine with their Session, after they are gone, they may command a reprieve or Execution. *Dyer* 205.

Licet soit ad Gaolum deliberandum, hac vice uncore pnt' adjourner lour Commission. Cr. Jur. 226.

Commission d' Oyer & Terminer, & Gaol-Delivery, pnt' estoyer ensemble. Ibid. Bro. Commission 24.

Justices de Gaol-Delivery & Oyer & Terminer, pnt' enquire per ambideux powers, and make up their Records accordingly. 9 *H.* 7. 9. *Cr. Jur.* 226.

Oyer and Terminer.

1. THe Justices Authority must be by Commission, and not by Writ, otherwise their Proceedings void. 42 *Ass.* 12. V. 1 And. 111, 112. 2 Roll. abr. 96. post. 256.

2. They cannot proceed but upon an Indictment taken before themselves.

3. By good Opinion they may proceed the same Day or Session against a Party indicted before them. V. 3 Inst. 164. *Nota le contrar' ad estre adjudge.*

4. Where Offences are limited to be heard and determined in any Court of Record, generally it may be heard and determined by them. *Quære*; for *Gregory*'s Case *contra*. V. *Dyer* 236.

5. Others may be added, or their power contracted by Association, or *Si non omnes*, as before.

6. One sitting without Adjournment determines their Commission.

7. Justices of Oyer and Terminer, or of Peace, cannot assign a Coroner, as Justices of Gaol-Delivery may.

8. By Stat. 9 *E.* 3. they are also to send their Records determined into the Exchequer.

V. 12 Ass. 21. 9. A *Supersedeas* suspends their power, and a *Procedendo* revives it; but a new Commission determines it; the like of Commission of *Nisi prius*, &c. but it determines not without Notice.

1. By shewing the new Commission.

V. 2 & 3 P. & M. c. 10. 2. Or proclaiming it in the County.

3. Or Sessions held by new Commission.

10. An Award upon the Roll not sufficient to return a Jury, but a Precept under Seal of the Commissioners.

V. 1 And. 109. 11. And *Nota*, That a Special Commission of Oyer and Terminer may be granted to sit in one County to hear and determine Treasons, &c. in another, but then the Indictment must

must be found in proper County, and the Trial by Jurors of proper County. *C. P. C. f.* 27.

N. B. If one be *Felo de se*, and no Inquisition taken, because the Body cannot be found, an Indictment may be before Justices of Oyer and Terminer at their Sessions. 5 *Co. Foxley's* Case.

Justices of Assize.

BY Stat. 27 *E.* 1. *c.* 3. *de finibus*, Justices of Assize have power to deliver Gaols of Felons and Murderers.

And by some Opinion they may do it *virtute officii*, without any special Commission. *S. P. C. c.* 5.

But in case of Counterfeiting Coin, *&c.* upon Stat. 3 *H.* 5. *Stat.* 2. *c.* 7. they must have a Special Commission.

Justice

Justice of Peace.

THE Stat. of 18 *E.* 3. *c.* 2. gives them power by Commission to hear and determine Felonies and Trespasses against the Peace. Vide 9 Co, 16. ante, 163. 2 Roll. abr. 96, &c. 5 Co. Foxley's Case.

But then there must be a special Clause in their Commission, *Necnon ad aud' & terminand' felonias*, &c. Otherwise they cannot do it. S. P. C. L. 2. 5.

Yet that Clause doth not in propriety make the Justices of Peace Justices of Oyer and Terminer, because that it is a distinct Commission; and therefore a Statute, as that of 5 *El. c.* 14. limiting Forgery to be heard and determined before Justices of Oyer and Terminer, gives not the power therein to Justices of Peace; but the Justices of the King's Bench are Justices of Oyer and Terminer within that Statute. V. C. P. C. c. 14. Dal. c. 40. 9 Rep. 118.

By force of the general words of their Commission, they may enquire of Murder at their Sessions; for though by Stat. 6 *E.* 1. *c.* 9. and

and 4 *E.* 3. Murders and other Homicides must stay till Gaol-Delivery; yet the Stat. of 18 *E.* 3. *c.* 2. 24 *E.* 3. *c.* 1. 17 *R.* 2. *c.* 10. hath enlarged their Commission and Power.

Yet in respect the Stat. 1 & 2 *Ph.* & *Ma. c.* 13. directs Justices of Peace to take Examinations in Case of Homicide and other Felonies, and to certifie them to the Justices of Gaol-Delivery; in point of Discretion they do forbear to proceed to determine great Felonies.

Dal. c. 40. But for Petit Larceny, and other small Felonies, they use to bind over the Prosecutor to the Sessions.

The Justices of Peace may proceed upon Indictments taken before themselves, or former Justices of Peace: But cannot proceed upon Indictments before Coroner, or Oyer and Terminer; but Justices of Gaol-Delivery may; and the Justices of Peace are to deliver the Indictments taken before them to the Justices of Gaol-Delivery, by Stat. 4. *E.* 3. *c.* 2.

By St. 4 E. 3. c. 2.

Hawk. 77.

They cannot deliver Persons suspect by Proclamation, as Justices of Gaol-Delivery may. Cr. f. 9.

In Cases of Felonies by Statute limited to be heard before Justices of Peace, they may proceed at Sessions; and consequently may bind over Informers, and certifie Examinations at Sessions.

But such Felonies by Statute, as are specially limited to Justices of Oyer and Terminer, or other Justices, and not to them, the Justices of Peace cannot proceed to take Indictments, as upon Stat. 3 *H.* 7. *c.* 18. for contriving to destroy the King, *&c.* upon Stat. 33. *H.* 8. *c.* 12. Murderers in the King's Palace; upon Stat, 8 *H.* 6. *c.* 12. of razing or imbezilling Records; upon Stat. 5 *El.* *c.* of Forgery; upon Stat. 13 *H.* 6. *c.* 1. secret imbezilling Goods, *&c.* upon Stat. 2 *&* 3 *Ed* 6. *c.* 24 striken in one City, and dies in another, or accessary in another County.

But in the former Cases it seems they may take the Examinations, Dal. c. 40.

and commit the Offenders, and bind over Profecutors.

If any Indictment be taken before Justices of Oyer and Terminer, Gaol-Delivery, or Coroner, they cannot proceed upon them; but upon Indictments taken before the Sheriff in his Turn, they may proceed by Stat. 1 *E.* 4. *c.* 2.

In Cafes of Treafon, Mifprifion of Treafon, or Premunire, regularly Juftices of Peace have no Jurifdiction; yet two Things may be done :

Dal. c. 90. 1. In any Cafe of Treafon, becaufe it is a breach of the Peace, they may, upon complaint, imprifon Offenders, take Examinations, bind Profecutors over, and certifie their proceedings into King's Bench or Gaol-Delivery.

Dal. c. 2. 2. In fome Cafes they are enabled to take Indictments, but not to hear and determine the fame, but certifie the fame into the King's Bench, upon Stat. of 5 & 23 *El.*

1. Maintainer of Authority of the See of *Rome.*
2. Obtaining Bulls, *&c.*

3. With-

3. Withdrawing from Allegiance.

4. Bringing in *Agnus Dei*, &c.

A Person bringing one before a Justice suspect of Felony, and refusing to be bound to prosecute, may be committed, if it appear he can testifie materially.

They may enquire of any Felony within the County, though within the Verge. 4 *R. Wigg*'s Case.

V. 1 Rol.abr. Tit. Coroner.

Coroner

HAth power in three Cases:

1. To take Indictments of Death; but this he can only do *super visum corporis*, otherwise void. Hence,

St. P.C. f. 52.

1. If the Body be interred before he come, the Township amerced, and he must dig up the Body; so if the Township suffer the Body to lie long to Putrefaction, without sending for the Coroner: The like of one dying in Prison.
2. If the Coroner be remiss, and comes not being sent for, he shall be fined and imprisoned.
3. He may enquire of flight, and such Presentment not Traversable.
4. If the Body cannot be seen the Justices of the Peace may enquire thereof.

Nota,

Nota, The Record of the Coroner of great Authority; if he Record a Confession of a Felony by Approver, or a Confession of breach of Prison, or an Abjuration, it shall not be Traversed.

And it seems by some he hath power to enquire of Rape, breach of Prison. 5 Jur. dnt. Coroner acquit person occise dnt' enquire quis occidit.

He hath Jurisdiction upon Arms of the Sea, where a Man may see from side to side. 11 E. 4. 3. 14 H. 7. 2.

2. Concerning Appeals.

The Coroner, together with the Sheriff hath power in the County-Court to receive Appeals of Robbery and other Felonies: But then it must be of a Felony in the same County: Upon this Appeal they may granr Process till utlawry; but it seems rhey cannot send an *Exigent*, because prohibited by Stat. of *Magna Cart. c.* 17. St. P. C. f. 52.

Such Appeal may be by Bill; and it may be removed into King's Bench by *Certiorari*, but it must issue both to Sheriff and Coroner, and not to Sheriff only. St. P. C. f. 64

It

It appears by Stat. 3 *H.* 7. *c.* 1. That an Appeal of Murder by Bill lies before Sheriff and Coroner.

3. The Coroner alone may take the Appeal of an Approver of a Felony in any County.

St. P.C. f. 53. But then he cannot make Process thereupon, but enter it in his Roll, and send it to the Justices of Gaol-Delivery, who thereupon may issue their Process to the Sheriff of the foreign County to take the Appellee.

4. To take the Abjuration of him that acknowledges a Felony done in the same County, or any other.

And note, That though more Coroners than one in any County, yet any one may exercise any of the Powers before.

But the Presentment of him that is first taken stands.

Sheriff.

THE power of the Sheriff to take Indictments, was either *virtute Commissionis*, which is taken away by the Stat. 28 *E*. 3. *c*. 9.

Officii; in his Turn: Wherein,

1. The Turns must be held *infra mensem Paschæ & Michaelis*; otherwise the Indictments there are void *per Stat*. 31 *E*. 3. *c*. 14. St. P.C. f. 84.

2. The Indictments must be under Seal of the Jury by Stat. of *West*. 2. *c*. 13. indented *per Stat*. 1 *E*. 3. *c*. 17. and the same for Lords of Franchises.

3. The Indictors must be of good Name, having 20 *s*. Freehold, or 26 *s*. 8 *d*. Copyhold; otherwise Sheriff punishable by Stat. 1 *R*. 3. *c*. 4.

4. The Turn can take no Indictment but of that which is Felony by Common Law, or of such Matters as are particularly by Act of Parliament limited to them, and therefore

fore an Indictment of Rape void there.

5. Upon an Indictment of Felony before the Sheriff in his Turn, they can make out no Procefs, but muſt ſend them to the Juſtices of Peace, who have power to proceed thereupon, as if taken before themſelves, by Stat. 1 *E.* 4. *c.* 2.

Court-Leet.

THE Court-Leet hath in effect the ſame Juriſdiction with the Turn; but Preſentments of Felony before them are to be ſent before Juſtices of Gaol-Delivery. 3 *H.* 4. 18. Vide 158.

The

The means of bringing Capital Offenders to Trial.

HAving considered the Courts of Justice, now we come to consider the means of bringing Capital Offenders to their Trial; and that is regularly by one of these three ways;

Appeal.
Approver.
Indictment.

And herein some Things are proper to each Proceeding.

§. Some things are common to them all, which come to be considered after particulars, proper to either, dispatched, *viz.*

Process.

Arraignment; and therein of Principal and Accessary.

Demeanour of the Party arraigned;

Standing

Standing mute.
Confessing.
Pleading and Pleas.

Declinatory.
Sanctuary.
Clergy.

In Barr,
Pardon.
Auterfoits acquit.
Auterfoits convict.

To the Felony.
Trial,
By Battel.
By Jury, and therein
Process against the Jury.
Challenge.
Evidence.
Verdict.
By Peers in case of Nobility.

Judgment in the ſeveral Caſes
Capital.

Execution.
Reprieve.
Falſifier { By Errour.
By Plea.

Appeal.

Appeal.

V. Keeling's Reports, 37, 90, 91, &c. to 108.

APpeals in reſpect of the manner of proceeding, are of two kinds;

1. By Writ.
2. By Bill.

V. poſt 187.

Touching Appeals by Bill, they may be proſecuted,

1. In the King's Bench againſt any that is *in cuſtodia Mareſchalli*, or let to bail: they are the Sovereign Coroners.

2. In the Court before Commiſſioners of Gaol-Delivery againſt a Priſoner, or one let to Bail, but not of one let to Mainprize.

But if one of the Appellees abſent, remove in *B. R.* by *Certiorari.*

3. By ſome before Juſtices of Peace, *quod quare* 44 *E.* 3. *Coron.* 95.

4. Before Sheriff and Coroner, as before; and it may be removed by *Certiorari* in *B. R.* 3 *H.* 7. *c.* 1.

5. Before the Conſtable and Marſhal, of a Felony done out of the Realm. 1 *H.* 4. *c.* 34.

2. In relation to the Matter.

Appeals are in matter,

1. Not Capital, as an Appeal of Maihem, which may be commenced in King's Bench, Gaol-Delivery, or before Coroner and Sheriff.

V. ante 33. Pulton de Pace, 15, 16, 17. 4 Co. 43.

This, though it be *felonice*, yet is but a Treſpaſs in its Nature and Judgment.

2. Of Treaſon; but this ouſted by Stat. 1 *H.* 4. *c.* 14.

2. Of Felony; and theſe of three kinds,

1. Of Death.

2. Of Larceny.

3. Of Rape.

Appeal

Appeal of Death.

V. Keel. Rep. 93 to 108.

AN Appeal of Death is either by the Wife, or Heir Male. 1 Inst. 123 b. 287 b.

1. Appeal of Death by the Wife; and therein these requisites;

1. She ought to be a Wife *de jure,* and not *de facto* only; and therefore *ne unq; onc' accouple* a good Plea. 2 Inst. 68. Post. 188. Stamford 59. 3 Leon. 268. 1 Inst. 34. b.

2. But she need not be dowable; for if she had elopped, or the Husband been attaint; yet she may have an Appeal of his death. West. 2. c. 34. 2 Inst. 68. 1 Inst. 33.

3. She ought to continue his Widow; for if she marry before, or pending the Appeal, the Appeal fails for ever; or if she marry after Judgment she cannot have Execution. Dy. 88, 296. 2 Inst. 68, 69. Stamf. 59. V. 1 Inst. 33. 2 Inst. 69.

2. Appeal of Death by the Heir.

1. If the dead hath a Wife, the Heir shall not have Appeal though she die within the year: but if the Wife Kelw. 120. Stamf. 59. b.

 kill

1 Jones 425. 1 Leon. 326. Dy. 50. pl. 4.

kill the Husband, there the Heir ſhall have an Appeal.

2. He muſt be Heir by courſe of Common Law; this hath theſe Exceptions.

1. Where Heir is diſabled by Attainder.

Stamf. 60.

2. Where the Appeal is againſt the Heir; in theſe caſes it goes to the next Heir, as if the other were dead without Iſſue.

Dy. 69. pl. 31. Stamf. 59, 80. Br. Appeal. 30, 75, 88, 144, 156.

3. It muſt be by Heir that was Heir at time of death of Anceſtor; for if he die within the year before, or after Appeal commenced, it is loſt.

Stamf. 59.

But it ſeems if the Heir having Judgment die, his Heir may have Execution.

Mag. Char. c. 34. 1. Inſt. 25.

4. It muſt be an Heir and Male; *Nullus capiatur propter Appellum feminæ alterius quam viri ſui*: But if be Heir, and Male, though he derive through

Females,

Females, he may have an Appeal. C. Lit. 25. b.

5. A Man above Seventy, or an Infant, may have Appeal; but no Battel waged, and adjudged of late times the Paroll shall not demurr. *Sed quære.* 2 Inst. 320. Kelw. 110. Br. Appeol. 116, 119.

But an Ideot, Monk, or Man mute, shall have no Appeal, neither of death, nor otherwise. Stamf. 60.

And note, the Appeal of death must be within year and day after death by Stat. 3 *E.* 6. *c.* 24. striken in one County, and dies in another; or Accessary in one County to death in another; Appeal brought where party died. C. P. C. 53. 4 Co. Heydon's Case. 1 Inst. 254. b. 3 Mod. 121.

Of conspiring the Death of a Man. Vide 2 Inst, 384.

Vide Cro. Car. Pigot's Case, Appeal of such Conspiracy.

Appeal of Robbery.

Stamf. P. C. 60, 61. Servant robbed, Master or Ser- may have Appeal.

22 Aff. 97. Br. Appeal. 100. But Testator robbed, Executors shall not have Appeal.

Fitz. Cor. 39. Villain shall not have Appeal of Robbery against his Lord; *contra* of death.

1 Inst. 123. b.

Two joint Owners robbed, Survivor shall have Appeal.

A Woman or Infant shall have an Appeal of Robbery.

If a man be robbed at several times, he must put all into one Appeal.

What omitted is confiscate.

The Appeal affirms the continuation of the property. Therefore if *A.* rob *B.* in the County of *S.* and go with the Goods in the County of *D.* an Appeal of Larceny lies in the County of *D.* but not of Robbery, for that is upon a taking from the person.

If *A.* be robbed by *B.* who is

Kelw. 160. robbed by *C. A.* may have an Appeal of Larceny against *C.*

This

This Appeal may be prosecuted in a year, two, or three, if there was fresh suit; and the judging of fresh suit lies in the discretion of the Court. V. 4 Leon. Doyley's Case 20 years after, sed 22 Ass. 97. contra. V. Stamf. 62.

And note, This, or any other Appeal lies against an Infant, against a Monk, without naming his Soveraign, against a Feme covert without naming her Husband.

What a Bar in Appeal of Robbery. V. 4 Co. Hudson's Case.

See 4 Co. Brook's Case, an Appeal of Burglary. 2 Leonard 83. m. Case.

V. ante 117, 118.

Appeal of Rape.

Appeal of Rape

1. Lies for the party raviſhed.

2. But if ſhe conſented to the Rape afterwards, then by Stat. 6 *R.* 2. *c.* 6. it is given to the Husband; if none, to the Father; if none, to the Heir, whether Male or Female.

If ſhe be taken in one County, and raviſhed in another, the Appeal of Rape lies in that County where actually raviſhed.

Although by Stat. *W.* 1. *c.* 13. whereby Rape was turned into Treſpaſs, forty days limited for her Suit; yet it being again made Felony by Stat. *W.* 2. *c.* 34 and no time limited for it, it may be brought in any reaſonable time.

Vide Appeal of Maihem, ante 133, & 180.

Proceſs

Process in Appeal.

Concerning Process in Appeals, *v. infra* Process in general, because many things therein common to Appeals and Indictments.

V. Cro. Jac. Bradly versus Banks, Retorn of a Writ of Appeal.

The Count in an Appeal.

1. The Plaintiff in his Appeal must mention the place and day; need not mention the hour; and though day be mistaken, not material upon Evidence.

V. Cro. Jac. 283.

2. It sufficeth for Plaintiff to count against Defendant, according to the construction that the Law maketh upon the Fact.

If *A. B.* and *C.* present, and *B.* only strike the mortal stroke, he may count against them all, that they stroke: So in Rape.

3. An Appeal by Heir ought to shew *comment.*

4. In Appeal of Rape, *feloniee rapuit* sufficient without saying *carnaliter cognovit. vid.* 11 *H.* 4. 1.

5. In

5. In Appeal against *A. B.* and *C. A.* only appears, he must count against all by the better Opinion.

V. 4 Co. Wait's Case. 2 Inst. 183. West. 1. c. 14.

6. At this day but one Appeal against all Principals and Accessaries, and if an Appeal be against *A.* and he is attaint or acquit, or Plaintiff non-suit, he cannot have another Appeal against *B.* But if Accessary in one County to Felony in another, there several Appeals against Principal and Accessaries.

Note, If he that is attainted of Treason or Felony be slain by one who hath no Authority, his eldest Son can have no Appeal, but his Wife may. 7 Co. in Calvin's Case.

If one Brother be slain, the other Brother of the half Blood shall never have an Appeal. Co. Lit. 14.

Pleas

Pleas to the Writ and in Bar.

Writ of Appeal abate,

1. For insufficiency in the Writ, as wanting *rapuit*, false Latin, &c.

2. Multiplicity of Action; a second Writ of Appeal purchased, pending a former Writ, abates; but if pending a former in the County, abates not.

But if the first Appeal by Bill be removed into the Bench by *Certiorari*, and the Plaintiff had appeared thereupon, and counted, abates the second Writ.

Nul tiel in rerum natura, as one of the Defendants, abates *vers touts* &c.

Pleas

Pleas in Barr.

Vid. infra in ceo general Title as to *auterfoits convict or acquit.*

C.P.C. 98. 1. He may plead any thing whereby it appears the Plaintiff is not intituled to the Appeal; *de quo v. supra.* 182.

2. Nonſuit in a former Appeal after Declaration, ſo of a *Retraxit.*

3. The Plaintiff brought an Appeal of the ſame Felony againſt another, who was acquit or attaint at his Suit.

4. Plaintiff hath releaſed to Defendant; but if Appeal againſt Divorce, a Releaſe or *Retraxit* as to one, no barr for the other.

5. If Defendant plead in Barr, he may alſo plead over to the Felony, and it ſhall not be double.

1. But in caſe of a Releaſe pleaded, he ſhall not plead over to the Felony, becauſe repugnant.

2. In

2. In caſe of Villenage pleaded he ſhall not plead to the Felony, becauſe Infranchiſement; yet if that barr found againſt him, he may plead not Guilty; and ſo in any other caſe where he pleads in Barr without pleading over, except Releaſe.

Approver.

Approver.

C. P.C. c. 65. C.P.C. f. 142. 1. WHAT it is to be an Approver?

A perſon indicted of Treaſon or Felony not diſabled to accuſe before competent Judges, confeſſing the Indictment, and ſworn to reveal all Treaſons and Felonies he knows, and then before a Coroner entring his Appeal againſt *participes Criminis* in the Indictment within the Realm.

2. Who may be an Approver, and who not?

1. A Peer of the Realm cannot be an Approver.
2. A perſon attaint cannot be an Approver; nor a perſon out of Priſon, though indicted.
3. A Woman, Infant, Ideot, *Non compos*, Clerk, cannot be Approver.
4. But a man above ſeventy, or maimed may, but he ſhall not wage Battel.

5. Clerk convict may.

3. In what Cases?

1. None can approve but an Indicted; and therefore if only in Prison upon suspicion, he may indeed confess the Felony, but such Confession amounteth not to an Attainder or Conviction, though it be an Evidence; and therefore cannot approve.

2. The Appellee in Appeal cannot be an Approver.

3. The Appellee of Approver cannot be Approver, for that would be infinite.

4. Though a person indicted approve, yet if after an Appeal be against him, the Approvement ceaseth.

5. He that hath once pleaded to the Felony cannot be Approver, but shall be hanged; for he is found false.

4. Of what Offences?

It must be only of the Offences contained in the Indictment, be it Felony or Treason, and therefore not of another Offence, nor of an Accessary before or after to the same offence; yet his Oath general, therefore as to the other Offences, it is but a Detection, not an Approvement.

5. Before whom?

Before such Judges only as can assign a Coroner, as King's Bench, Gaol-Delivery, Oyer and Terminer, High Steward; but not before Justices of Peace, Court Baron, or County Court.

But it is in the discretion of the Court either to suffer him to be Approver, or to respite Judgment and Execution, till he hath convicted all his Partners.

6. How demeasned after Appeal?

1. After Felony confessed upon the Arraignment, a Coroner assigned and sworn in Court to discover Offenders.

2. A day prefixt, within which he is to perfect his Appeal before the Coroner, and in every of these days he must appeal; for if he fail in any, and the Coroner record it, he is to be hanged.

The time limited to perfect his Appeal by 5 E. 2. *c.* 34. is three days, but that repealed, 15 *E.* 2.

3. During the time limited for his Appeal, he shall be at large, and have 1 *d. per diem* till his Appeal finished.

4. If he appeal persons beyond Sea, or such as are not *in rerum natura*, and that appear by Testimony of Country, or by Retorn of Sheriff, *quod non fuit invent'* he shall be hanged.

5. After his Appeal formed before the Coroner, he must repeat it *verbatim* before the Court; and if he fail

thereof, and the Coroner record it, he shall be hanged.

7. Process in Appeal.

1. In the same County the Coroner may award Process to the Sheriff till Exigent.

2. If Appellee be in a foreign County, then the Judges before whom the Appeal is, may grant Process, *viz.* *B. R.* or *Itinerant* by Common Law: and by Stat. 28 *E.* 1. *de Appellatis*, the Justices of Gaol-Delivery may send Process into a foreign County, as well to apprehend the Appellee, as a *Venire Facias* to try the Issue.

S. P.C. f. 146.

8. Proceeding upon Trial.

The Appellee may put himself upon the Country, or wage Battel.

If five Appellees, and they wage Battel, he must fight them all.

If two Approvers against one Appellee, if the Appellee vanquish the first, he is acquitted against the rest: though

though Appellor retract his Appeal, or be vanquished; yet if the Offence be within Clergy he shall have it; and so of the Appellee.

9. Proceeding after Trial.

If the Appellor convict the Appellee, either by Battel or Verdict, the King *ex merito justitiæ* is to pardon him; and from the time of his Appeal till his Pardon or Conviction, ought to have wages.

Indictments.

Note, a Man attainted of Felony may be indicted of Treason. 4 Co 590.

THESE things considerable:

1. Where an Indictment requisite in cases Capital, and where not.

2. What the quality of Indictors.

3. Of what matters they may enquire.

4. Before whom found.

5. What requisite in the manner of them.

V. 3 Mod. Crofton's Case.

1. Where an Indictment requisite for party to be arraigned at the King's Suit.

1. By the ancient Law, if a man was taken in Larceny with the manner, and that brought into Court with the Prisoner, the Prisoner should be arraigned thereupon without any Indictment. Stat. *P.C. f.* 148.

And such was the use of those Manors that had Infangthef. *Ibid. f.* 29. *V.* 1 *E.* 3. 17. 17 *Ass.* 49. but this disused.

2. If

2. If Treſpaſs be brought *de muliere abducta cum bonis viri*, and the Defendant found Guilty; or if in Treſpaſs for Goods the Defendant be found that he ſtole them; this in the King's Bench equivalent to an Indictment, and the Defendant put to anſwer to the Felony. S. P. C. f. 94. And note, tho' an Indictment be for Felony, yet the Judgment may be Treſpaſs. Keeling 29.

3. In ſome Caſes upon Appeals by Appellors or Approvers not proſecuting, &c. the Defendant arraigned at the King's Suit; becauſe it carries a preſumption of truth; and therefore if the Defendant be both appealed and indicted upon a non-proſecution of the Appeal, the party ſhall be arraigned upon the Appeal, not the Indictment. 4 *E.* 4. 10.

Wherein,

1. If the Plaintiff in Appeal by Writ be Nonſuit before Declaration, he ſhall not be arraigned at the King's Suit. 1. Becauſe no certainty. 2. The Writ may be at another's Suit; but if it be by Bill, either by Appellor or Approver, it ſeems he ſhall, becauſe the certainty appears; therefore in the former S. P. C. 148.

Case, if there be no Indictment against him, he is dismissed.

V. Keel. 95, to 98, 104, 107.

2. If the Plaintiff release his Appeal after he hath commenced it, the party shall be arraigned at King's Suit: But if before it was commenced, then not; because it was never well commenced.

3. If the Plaintiff or Approver after Appeal commenced, confess it false, or take to his Clergy, or wave his Appeal, yet arraigned at the Suit of the King: But if the Approver after Battel joyned do in the field confess it false, the Appellor hang'd, and the Appellee discharged, because amounts to a vanquishment.

4. If the Appeal abate by Act of the Plaintiff, as taking Husband; or act in Law, as death; Appellee arraigned at the King's Suit: But if it abate by insufficiency in the Appeal, as by false Latin, Misnosmer, or because Plaintiff disabled to commence Appeal, as Utlary of Felony, or Trespass; or the year and day past; or Plaintiff not Wife or Heir; Defendant not arraigned upon Appeal, but may be indicted.

5. If

5. If the King pardon after Battel joyned in Appeal by Approver, no Arraignment at King's Suit, but Appellee discharged.

And note, where the Prisoner arraigned upon the Appeal, a *Cesset Processus* entred upon the Indictment. S. P. C. 104.

The return of the Sheriff of Rescue or Escape of a Felon, not sufficient to put the Party to answer the Felony. S. P. C.

2. The second thing considerable is the quality of the Indictor.

Concerning Indictments in Leets and Turns, *V. ante* upon Stat. *W.* 2. *c.* 13. 1 *E.* 3. *c.* 17. 1 *R.* 3. *c.* 4. 1 *E.* 4. *c.* 3. Ante 137, 142, 151, 174.

There is a general Statute that refers to all Indictors, as well in case of Felony as Treason, 11 *H.* 4. *c.* 9. which requires C. P. C. f. 33.

1. Indictors not to be V. 1 Rol. Rep. the King and George.
   1. Persons fled to Sanctuary for Felony or Treason.
   2. Not outlawed.
   3. Not indicted or attainted.
   4. Not by Conspiracy.

2. That

2. That the Indictors be the King's Liege people.

3. Returned by the Sheriff, or Bailiffs of Franchiſes.

4. Not at the nomination of any perſon.

And all Indictments taken contrary, void.

Hence it follows,

1. That the Priſoner upon his Arraignment may plead this matter, or any point of the Statute, and may plead over to the Felony. *Vide Scarlet's* Caſe. 3. Inst. 33.

2. Though there be twenty of the grand Jury, yet if one is outlawed, or taken at the nomination of another, it avoids the whole Indictment.

By Stat. 3 *H.* 8. *c.* 12. Juſtices of Gaol-Delivery, or of Peace, whereof one of the *Quorum*, in open Seſſions may reform the Pannel of the Grand Jury, by putting in and taking out Names, and the Sheriff is to return the Pannel ſo reformed.

But this takes not away the former Statute of 11 *H.* 4. nor alters it.

By Stat. 33 *H.* 6. *c.* 2.

Special provision is made for the quality of the Indictors in *Lancashire.*

3. Of which things they can enquire.

Regularly they can enquire of nothing but what ariseth within the Body of the County for which they are retorned.

And therefore if an Indictment for scandalous words, or other matter transitory, be found, upon not guilty pleaded thereunto, if upon Evidence it appear to be spoken in another County, the Defendant is not guilty.

And therefore where stroke was in one County, and death in anothe, he could not be indicted where party died.

But for a Nusance in one County to another, a Jury of the County where Nusance is committed may indict it.

But divers Statutes have introduced an alteration of the Law in some Capital Cases, 28 *H.* 8. *c.* 15.

Trea-

Treasons, Felonies, Robberies, Murders, and Confederacies upon the Sea may be enquired, tried, heard, determined, and judged in such Shires and places as shall be limited by the King's Commission to be directed for the same.

A Treason done out of the Land, it hath been held that it may be enquired of and tried where the Offender had lands; but to avoid the Question by Stat. 35 *H.* 8. *c.* 2. all Treasons and Misprisions, or concealments of Treasons done out of *England*, may be enquired, heard, and determined by the Justices of the King's Bench, by persons of the County where the Bench sits, or before Commissioners, and in such Shires as shall be appointed by the King's Commission, by good men of the same Shire, as if the Treasons, *&c.* had been done in the same Shire where inquired.

Tho' the Indictment lays it as done in one County, yet Evidence may be of Facts done in others. Keel. 15, 33.

C. P. C. f. 71.

Upon this Statute,

1. If the Bench remove after Indictment into another County, the Trial shall be by persons of the first County.

2. The

2. The King's writing his name to the Commission, or putting his Signature to the Warrant, sufficient.

3. *Ireland* is out of the Realm to this purpose.

V. 1 And. 262. That Treason done in Ireland may be tryed here, V. ante 16.

The Statutes stand unrepealed by Stat. of 1 *Ma. c.* but the Stat of 32 *H*. 8. *c*. 4. for Trial of Treason in *Wales* repealed by 1 *Ma*.

C. P. C. f. 24.

Again, by Stat. 2, & 3 *El. c*. 24. a man stricken in the County of *D*. dies in the County of *S*. or Accessary in one County to Felony in another County, may be indicted and tried in the County where the death was, or Felony committed by the Principal; but it must be laid according to truth.

C. P. E. 49.

If Inquest conceal any matter presentable before Justices of Peace, they may impannel Inquest to enquire of such Concealments, and amerce the Concealers, by Stat. 3 *H*. 7. *c*. 1.

4. Before whom found.

Of this before. 156 to 175

Keeling 21, 28, 32, 69, 70, 82, 112, 125.

St. P. C. 97

5. The Form of Indictments.

1. By Statutes:

4 *H.* 4. *c.* 2. *Insidiatores viarum & depopulatores agrorum* to be omitted in Indictments; and if inserted, yet Clergy not thereby taken away.

37 *H.* 8. *c.* 8. Indictment not to be quashed for want of the words, *viz. gladiis, baculis, & cultellis.*

2. At Common Law:

1. Want of certainty vitiates, want of year, day, or place.

Indictment for Escape of one taken on suspicion of Felony, without shewing what Felony, *Male.*

Indictment for receipt of a Felon without shewing who received, *Male.*

Indictment *ad magnum curiam & Letam, Male.*

V. Keel. 29. Tho' the Indictment is Felony, the Judgmeut may be Trespass. V. ibid. 30, 52, & 82.

Indictment for making Alchimy *ad instar pecuniæ Regis*, without shewing what money, *Male.*

Indictment *quod communis malefactor*, without shewing wherein, *Male.*

Indictment *quod cepit*, or *furatus est*,

est, without saying *felonice*; *abduxit equum*, without saying *cepit*; or *carnaliter cognovit*, without saying *rapuit*; or *burgariter*, when it should be *burglariter*; or if Felony before Justices of Peace, without saying *necnon ad diversa felonias, &c.* or before the Mayor of *London* without saying *& Coronatore*, or of a murder with a Gun, without saying *percussit*, *Male*.

One indicted of Burglary and stealing; and acquitted, can't afterward be indicted for Burglary, but may for a Felony done at the same Time. Vide Keel. 30, 52.

Indictment supposing the stroke 1. *Augusti*, death 2. *Augusti*, *& sic felonice murdravit* 1. *Augusti*, *Male*. But *sic murdravit modo & forma præd'*, or *præd'* 2. *Augusti*, *Bene*.

Keel. 28, 32, 89, to 125.

Indictment *quod dedit mortalem plagam circa pectus*, *Male*: but *in sinistra parte ventris circa umbilicum*, *Bene*.

Indictment *de morte cujusdam ignoti*, or *felonice cepit bona*, &c. *cujusdam ignoti*, or *domus & Ecclesiæ*, in time of vacation: good.

Indictment of Poisoning with several sorts of poison, without shewing of which he died, good.

C. P.C. c. 62.

Where an Indictment shall conclude *contra formam Statuti* or not, V. Keel. 32, 69, 70. Dy. 365.

6. *Proof*

V. 2 And. 69.
The Parties confession out of Court, a Proof in Treason.

6. *Proof upon Indictments.*

In case of Treason and Misprision by the Stat. 1 *E.* 6. *c.* 12. & 5 *E.* 6. *c.* 11. there ought to be two lawful Accusers, that is, witnesses upon every Indictment.

C. P. C. 24.

An Accuser by hearsay is no lawful Accuser within this Statute.

The necessity of such proof upon Indictment of Treason is not taken away by Stat. 1 *E.* 1. 2. 1 & 2 *Ph.* & *Ma.* *c.* 11. but only in the case of counterfeiting Coin.

St. P. C. 164.

But these Witnesses need not be present with the Indictors, but they may send it to them in writing.

Of Informations, V. 3 Inst. 193. 4 Inst. 172.
On the Stat. 37 *H.* 8. of Usury, V. 11 Co. Dr. Foster's Case. Cro. Jac. 104. On 23 *H.* 8. c. 4. for Extortion in Victualers. Cro. Car. 112, 146. Hutton 98. Mo 421. See also Cro. Car. 112. touching Informations on the Stat. 21 Jac. 33 *H.* 8. &c. Information for not coming to Church. Cro. Jac. 142. On the Stat. 31 *El.* of Symony. Cro. Car. Bawderock and Mackaller. 3 Lev. 169. 7 Co. 26. On the Stat. against Forgery, Perjury, &c. V. ante 151.

Process.

NOW we come to those Proceedings that for the most part are common both to Appeals and Indictments. And

1. Of Process.

   1. Upon an Indictment or Appeal of Death, but one *Capias*, and then *Exigent*: But in case of Robbery, then by Stat. 25 *E*. 3. *c*. 14. two *Capias*'s, then *Exigent*; but this Stat. extends not to Death.

   2. But Indictments or Appeals of Treason, or any Felony, or Trespass against a Person of another County after one *Cap*. a second *Cap*. with Proclamations shall be granted to the Sheriff of that County wherein he is supposed to be conversant before an *Exigent* shall issue, by *Stat*. 8 *H*. 6. *c*. 10. And

upon this Statute Process shall go to a County Palatine; and if in the Indictment he be styled *nuper de D.* and so in several Counties, the second *Cap.* shall go to every County.

St. P. C. f. 67. 3. In Appeal or Indictment against Principal and Accessary, by Stat. *W.* 1. *c.* 14. Process of Utlary must stay against Accessary till Principal attaint.

But if it be an Appeal by Writ, which is general till Declaration, the Plaintiff must at his peril distinguish the Process; for if he take his *Exigent* against all, he must count against all as Principals.

An Appeal against divers, one appears and pleads to the Writ, or in Bar, which goes to all, Process of Utlary shall stay against the rest till Plea determined.

An

An Indictment or Appeal may be removed in *B. R.* by *Certiorari*, but it must accord with the Appeal.

Upon an Appeal removed by *Certiorari*, the Plaintiff is without Day; and to compel the Plaintiff to proceed, the Defendant may take out a *Scire Facias*, and upon two *Nihils*, or a *Scire Feci* and default, Defendant discharged.

But the Plaintiff upon such Appeal removed, may have *Capias & Exigent*.

If the Defendant comes in by *Capias*, and after appearance make default, a new *Capias*; if upon *Exigent*, a new *Exigent*; and upon second appearance shall plead *de novo*, for the first Issue and Inquest is *sine die*.

Arraignment.

1. IN what manner a Person is to be arraigned?

Keel. fo. 10. The Prisoner at the time of his Arraignment ought not to be in Irons.

2. Where arraigned upon several St. P. C. f. 66. Appeals or Indictments.

If a Man be indicted or appealed of Robbery or Death at the Suit of one, he shall be arraigned and tried at the Suit of another, because they have several Interests in the Judgments.

And now the same Law is of an Indictment of Robbery, because by Stat. 21 *H.* 8. *c.* 11. the Party is to have Restitution.

But if the Appeal by one be not commenced till after an Attainder at the Suit of another, he shall not be arraigned upon another Suit:

But if the first Attainder be pardoned, he shall be arraigned upon the

the ſecond Appeal commenced after the Attainder.

But after an Attainder of Felony, he may be arraigned for Treaſon for the King's Intereſt.

By the Common Law, a Clerk convict ſhould have anſwered all Felonies, and were acquit or convict at the Suit of others.

But this was remedied by *Stat.* 25 *E.* 3. *c.* 4. *pro Clero.* And therefore after that Stat. the Clerk convict and delivered to the Ordinary, was diſcharged of all former Felonies whereof he was not arraigned before Clergy; and that although thoſe other Offences were not within Clergy. *Dyer* 214.

But now by Stat. 8 *El. c.* 4. after Purgation, and 18 *El. c.* 7. after burning in the Hand, he ſhall be put to anſwer former Felonies upon Appeal or Indictment. *Vid. infra In auterfoits acquit & convict.*

3. Concerning the Arraignment of Principal and Acceſſary. V. poſt. 221.

1. Who ſhall be ſaid an Acceſſary before, after ?

2. How the Proceeding ſhall be againſt them upon their Arraignment ?

N. B. A Priſoner may be arraigned and tried immediately by a Commiſſion of Gaol-Delivery and of Oyer and Terminer : But if tried by a Commiſſion of Oyer and Terminer only, there muſt be 15 Days after pleading to return Juries, &c. Vide Keeling fo. 7. poſt. 256.

Prin-

Principal and Acceſſary. V. ante 117. Margin.

1 WHO an Acceſſary?

1. In Treaſon no Acceſſaries, but all Principals; but a Procurer before, or a Receiver knowingly after, is guilty as Principal in High Treaſon. Nor in Petit Larceny. 12 Co. 86. Sed 2 Inſt. 183. contra. C.P.C. f 138. 4 & 5 P. & M. c. 4.
2. Where an Act of Parliament makes a Felony, it doth incidently make ſuch Acceſſaries as would be Acceſſaries before or after to a Felony at Common Law; as in Caſe of Buggery, Rape, &c. C. P.C. f. 59.
3. The Acceſſary cannot be guilty of Petty Treaſon, where the Principal is but Murder.
4. If divers come to commit an unlawful act, and be preſent at the time of Felony committed, though one of them only doth it, they are all Principals. Vide the Caſe of the King & Plummer in Keeling.

So if one present move the other to strike: Or if one present did nothing, but yet came to assist Party if need; or if one hold the Party while the Felon strikes him; or if one present deliver his Weapon to the other that strikes; for they are *præsentes*, *auxiliantes*, *abettantes*, or *confortantes*.

S.P.C. f. 40. But if one came casually, not of the Confederacy, though he hindered not the Felony, he is neither Principal nor Accessary, although he apprehend not the Felon.

V. 1 And. 16. Pudsey's Case. Keeling 52, 53. 4 Rep. 44. Vaux's Case. C. P. C. 138.

5. In some Cases a Person absent may be Principal.

1. He that puts Poison in any thing to poison another, and leaves it, though not present when taken: And so it seems are all that are present when the Poison is so infused, and consenting thereto.

2. If upon the same Ground, or in the same House, though not within view of the Fact, when many come

come to do an unlawful act: See before Lord *Dacre*'s Case, and *Pudsey*'s Case, in Murder and Robbery. V. Rex. con. Plummer in Keeling; & Pudsey's Case. 1 And. 116.

3. By special Act of Parliament, as upon the Stat. 3 *H.* 7. *c.* 2. 8 *H.* 6. 12.

2. Accessaries before; he that commandeth or assenteth to the committing of a Felony, and is absent when done. V. Dyer 168.

1. In Manslaughter there can be no Accessary before, because done without premeditation. 4 Rep. Bibith's Case.

2. Where the Execution varies from the Command, in the Person slain; as a Command to kill *A.* and he kill *B.* or in the nature of the Offence; as a Command to rob *A.* as he goes to Market, and he break open his House and robs it, the Commander is not Accessary. C.P.C. f. 57.

3. But a Command to poison *J. S.* and he shoots him; a Command to rob or beat *J. S.* and he beats him to Death, the Commander Accessary.

4. If *A.* command *B.* to rob *C.* and before the Fact *A.* repents, and coun-

countermands his command, yet *B.* kills him, *A.* is not Accessary.

5. If *A.* poison an Apple, and deliver it to *C.* to deliver to *D.* *C.* not knowing delivers it, Murder in *A.* but no Offence in *C.*

V. post. 220. 3. Accessary after,

St. P. C. 41. 1. A receipt of stollen Goods makes not Accessary, unless he receive Thief. *Ou receive le biens a auter felon*; 9 H. 4. 1.

2. Every Receipt to make an Accessary, must be knowing him to be such.

But if a Man be attaint of Felony in the County of *A.* the Law presumes notice thereof in the same County: Therefore the Receipt of him in the same County seems Accessary; *Contra* if in another County. *Videtur cognitio requisita in utroque.*

3. Receipt of a Felon, that hath given Bond to appear at Sessions, *&c.* not Accessary.

4. Relieving a Felon with Money, Victuals, Horse for his journey, know-

knowing, Acceſſary: But if he be in Priſon, then lawful. *Dal. c.* 108.

5. A Brother receiving his Brother may be Acceſſary, or a Husband his Wife, but not the Wife of her Husband.

6. A Man may be Acceſſary to an Acceſſary: And

The ſame Man may be Principal and Acceſſary where Felony done by divers.

7. But ſending a Letter in favour of a Felon, inſtructing him to read, adviſing to labour Witneſſes not to appear, not revealing a Felony intended, permitting a Felon to eſcape without Arreſt, makes no Acceſſary: *Mes contempt.*

8, Acceſſary cannot be, unleſs a Felony committed; therefore *A.* wounds *B.* dangerouſly, *C.* receives *A.* then *B.* dies, *C.* is not Acceſſary.

9. *Si Felon vient al meason* I. S. *que suffer lui d' aler hors, nest Felony nisi prist mony au autrechose pur lui suffer escape.* 9 H. 4. 1.

A. counterfeits the Great Seal, and B knowing it, receives, abetts and comforts him; not Treason, nor can he be an Accessary. 12 Co. 86.

J. S. is robbed, and afterwards pursues the Felon and takes his Goods from him, and suffers him to escape. J. S. is not Accessary, but it is a Concealment. Moor. 8.

Arraignment of the Principal and Accessary, and things Observable therein.

1. IF the Principal be acquitted, or be convict only of Manslaughter, or *se defendendo*, or before Attainder hath his Clergy, or be pardoned, or die, the Accessary shall not be arraigned; otherwise if after Attainder. S. P. C. 47. C. P. C. 139. 4 R. Seyer's Case,

2. If the Principal be attaint at the Suit of the King, the Accessary shall not be arraigned at the Suit of the Party, *Issint si soit attaint d' auter felony*. S. P. C. 47.

3. If Principal stand mute, Accessary not arraigned. *V. contra* 2 *R.* 3. 22. 3 *H.* 7. 1.

4. The *Exigent* shall not go out against Accessary, till Principal attaint by *Stat. W.* 1. *c.* 14. S. P. C. 46.

5. Where

5. Where Principal appears not, Accessary shall be put to answer: But he shall not be tried till Principal attaint or appear, unless he will, for he may wave the benefit of the Law.

St. P. C. 47.

Com. 100. Gittin's Case.

6. If he be indicted as Accessary to two, and one of the Principals appears and is convict, the Court may, if they please, try the Accessary; and if he be found Accessary to him that is attaint, he shall be condemned; if not found Accessary to him, yet he may after be arraigned as Accessary to the other when he appears.

C. West. 1. c. 14. V. Steven's Case, Cro. Car. 409.

7. If Principal and Accessary appear and plead to the Felony, they may be tried by the same Inquest; but the Principal must be first Convict, and have Judgment, before Judgment against Accessary; and the Jury shall be charged, That if they find the Principal not guilty, they shall find the Accessary not guilty.

8. If Principal be erroneously attainted, yet Accessary shall not take

take advantage thereof, but be arraigned.

9. If Murder or other Offence were in one County, and Accessary in another, by 2 *Stat.* 6. *c.* 24. V. 1 And. 194. Grevil's Case.

1. If Accessary be in *Middlesex*, where the King's Bench sits, and Principal in another County, the King's Bench may try the Accessary. C.P. C. p. 49

2. Certificate in such Case shall be upon a *Certiorari* or Special Writ, if need be, formed upon the Matter, and not by Precept, under their Seals, in their own Names. Ibid.

3. The High Steward is within the Act.

Accessory al Petit Larciny. 3 Cr. 750. *nemy al Homicide per infortun.* 15 E. 3. Coron. 116. V. 12 Co. 86. No Accessaries in petty Larceny. Sed vid. 2 Inst. 183. contra.

Novel felony fait per Stat. videtur null Accessory nisi specialment enact. quæ. V. Dy. 88. Stam. 44.

Vi. pur Tryal d' Accessory in forrein County, 2 E. 6. cap. 24. Dy. 253.

Acquit

V. post. 244. *Acquit come Principal nemy arrain come Accessory: Mes acquit come Accessory arrain come* **Principal.**

Vide Popham. 107. Everet's Case.
Cro. Car. 409. Steven's Case.

Mute

Mute, Paine fort & dure.

V. Keeling 27. 36, 37. V. Stat. West. 1. cap. 12 & ee inquiry de offence dnt' Pain fort & dure.

NOW we come to the Demeanor of the Prisoner upon his appearance:

And thereupon either,

1. He stands mute.
2. He pleads.
3. Or he confesseth the Fact.

V. Tit. Clergy postea.

1. What said a standing Mute? This of two kinds.

1. When he answers nothing at all: And then it shall be enquired whether he stand Mute by Malice or by the Act of God.

V. West. 1. c. 12. St. P. C. f. 150.

If it be by the Act of God, then the Felony shall be enquired of, and whether he be the same Person, as if he had pleaded not guilty.

If by Malice, or if the Prisoner hath cut out his own Tongue, then he shall have Penance.

Nota, *Si ad unfoits pled al Felony licet apres estoit mute, ser. trie.* 15 E.4.33.

Viez Pere estoit mute aver. Penance. 7 *Car.* Lord *Castlehaven*'s Case.

2. When he pleads, but not effectually; as when he answers not directly to the Fact, or concludes not upon the Country, then if the Cause be probable, he shall be put to his Penance. *C. P. C. p.* 227.

Nota, *Si Chall. ultra* 35. Standing mute? V. *C. P. C. fo.* 227.

2. What the consequent of standing mute? 1. *forfeit biens.* 14 E. 4. 7.

Keeling 36. 1. In Treason it is a Conviction.

2. After Attainder, and ask't what he can say, why no Execution? Standing mute, he shall be Executed.

3. In Appeal standing mute, Judgment against him to be hanged. *Contra* 14 *E.* 4. 1.

4. Upon Stat. 33 *H.* 8. *c.* 2. of Felony within the Verge, Offender standing mute, Judgment against him.

5. But

5. But in other Cases of Felony, *Paine fort & dure*, and forfeits Goods.

1. Remanded to Prison.

2. Lie naked in some dark Room, with Hands and Legs extended.

3. Weights encreased.

Keeling 27. One standing Mute, his Thumbs were tied with Whip-cord, &c.

N. B. By Stat. 25 *H.* 8. *c.* 3. Clergy is taken away from such as stand mute, or challenge above 24, if indicted for any petty Treason, wilful burning of Houses, Murder, Robbery, or Burglary, or other Felony, *&c.*

Pleas.

IF the Prisoner plead, it is either,
1. Declinatory.
Sanctuary.
Clergy.

V. Post. 243. 2. Or to the Felony:
1. Demurring.
2. Pleading in Bar.
3. Pleading the general Issue.

Declinatory Exceptions.

1. Sanctuary and the Consequents, Abjuration ousted by Stat. 21 *Jac. c.* 28.

Clergy.

V. Al. Poulter's Case. 11 Co. & Keeling's Reports. 41. 98 to 108. Vide ante 46. 227.

CLergy wherein,

1. Who shall have benefit of Clergy?
2. In what Cases?
3. At what Time?
4. Who the Judge?
5. What the Consequent?

1. Who shall have Clergy, and who not?

No Clergyman or Clerk in Orders is to be burnt. Hob. 294. Sed Vide Stat. 28. H. 8. c. 1. contra. V. 11 Co. 29. b. 3 Inst. 114.

1. A blind Man shall not have his Clergy. *Nec* Jew, *nec* Turk; *contr. de* Greek *ou home excommeng'*
2. A Woman cannot have the benefit of Clergy.

Provision by Stat. 21 *Jac. c.* 6. that for stealing Goods under 10 *s.* without Burglary or Robbery, *&c.* shall be burnt in the Hand for the first Offence. C. P. C. c. 124.

3. Bigamy ousted of Clergy by *Stat. de Bigamis,* 4 *E.* 1. but restored to it by *Stat.* 1 *E.* 6. *c.* 12.

Cestuy que abjure avera Clergy apres son returne. 8 H. 8. Kel. 186.

Hob. 294. *Cestuy que ad unfoits Clergy, naver auterfoits nisi deins orders*. 4 H. 7. c. 13. 17.

2. In what Cases: Some Things premised in general.

1. By *Stat.* 25 *E.* 3. *c.* 4. *pro Clero.* Clergy allowed in all Treasons or Felonies, (except Treasons against the King;) so that after that Statute, there was Clergy in all Cases, but

{ Treason,
{ Sacrilege.

Note, V. 11 Co. 29. b.

2. Consequently wheresoever Clergy is not allowable in any other Cases, it is taken away by some Act of Parliament.

3. Consequently where any Felony is made by a new Stat. Clergy is to be allowed, unless expresly taken away.

I 4. Con-

4. Consequently where by any special Act of Parl. Clergy is taken away in any Offence, the Indictment ought to bring the Case within the Statute. As upon the Stat. 3 & 4 *Ph. & Ma. c.* 4. the Indictment must run *malitiose*; so upon Stat. 8 *El. c.* 4. it must be *clam & secrete*; in case of Murder, *ex malitia præcogitata*, otherwise Clergy allowable. V. 11 Co. Poulter's Case.

5. Consequently a Statute taking away Clergy from the Principal, doth not thereby take it from the Accessaries before, unless specially provided for. 3 Inst. 114.

6. Where Clergy is allowable, it is to be allowed, though the Party be Convict by Confession, Verdict, or stand Mute, or challenges peremptorily above 35.

2. Particular Offences where Clergy, and where not.

1. High Treason no Clergy.

2. In Petty Treason.

Principal oust of Clergy, if convict by Verdict or Confession, by *Stat.* 23 *H.* 8. *c.* 1. revived by 5 & 6 *E.* 6. *c.* 10. and by *Stat.* 25 *H.* 8. *c.* 3. though standing Mute, not directly answering, or challenging above twenty.

V. 1 And. 114. & Sr. 8 & 18. Eliz. Co. Pl. Cor. 115. Keel. 68, 69, 70.

Not oust of Clergy in Appeal, unless Convict by Verdict or Confession.

Accessaries before the Fact maliciously, oust of Clergy in all cases by 4 & 5 *Ph.* & *Ma.* *c.* 4.

3. Wilful Murder of Malice prepense, Principal oust of Clergy in all cases, by *Stat.* 23 *H.* 8. *c.* 1. 25 *H.* 8. *c.* 3. 1 *E.* 6. *c.* 12.

Accessary before maliciously, ousted in all cases by 4 & 5 *Ph.* & *Ma.* *c.* 4.

4. Ar-

4. Arſon of Houſes, or Barns full of Corn, Principal ouſt of Clergy in all caſes, *viz.* *ſur* Conviction by Verdict, or Confeſſion, by 23 *H.* 8. *c.* 1. upon ſtanding Mute, not direct anſwering, challenge above twenty, by *Stat.* 25 *H.* 8. *c.* 3.

But Utlary ſtands ſubject to Clergy. V. 11 Co, Poulter's Caſe.

Acceſſary ouſted of Clergy in all caſes by 4 & 5 *Phil.* & *Ma.* *c.* 4.

5. Simple Burglary.

Principal ouſted of Clergy, if utlawed, Convict by Verdict, or Confeſſion.

Not ouſted if ſtand Mute, challenge above twenty, or not directly anſwering.

Acceſſary before or after, not ouſt of Clergy.

6. Burglary, any Perſon being in the Houſe, or put in fear or dread.

Principal ouſt of Clergy in all caſes, *viz.* by *Stat.* 1 *E.* 6. 12. in caſe of any Conviction or Attainder; and by 25 *H.* 8. *c.* 3. revived by 5 *&* 6 *E.* 6. *c.* 10. it takes away Clergy where above twenty challenged.

But Acceſſaries not ouſted of Clergy.

7. Robbery, which hath ſeveral Qualifications, with theſe Conſiderations:

1. From the Perſon

Without putting in fear, but *clam & ſecrete*: by Stat. 8. *El.* *c.* 4. Principal in all caſes ouſt of Clergy, Acceſſary not ouſt.

With putting in fear, Robbery in or near the High-way.

1. Principal in all caſes ouſt of Clergy, *viz.* if Appeal or Indictment by 23 *H.* 8. *c.* 1. Convict 23 *H.* 8. *c.* 1. Attaint 1 *E.* 6. *c.* 12. Mute, Challenge above twenty, by Stat. 25 *H.* 8. *c.* 3. revived by 5 *&* 6 *E.* 6. *c.* 10.

2. Ac-

2. Acceſſary before ouſt of Clergy in all caſes by 4 & 5 *Ph.* & *Ma.* *c.* 4.

2. From Dwelling-houſe; and this of three kinds:

1. Owner, Wife, or Servants being in the Houſe, or put in fear, here Clergy.

1. As to Principal, taken away by 23 *H.* 8. *c.* 1. in caſe of Conviction by Verdict, or Confeſſion, and by 25 *H.* 8. *c.* 3. revived by 5 & 6 *E.* 6. *c.* 10. in caſe of ſtanding mute, challenge *ultra* twenty, not directly anſwering: Alſo to a Conviction in a foreign County, if it appear by Examination not to be within Clergy in the ſame County.

2. Acceſſary in all caſes ouſt of Clergy, by *Stat.* 4 & 5 *Ph.* & *Ma.* *c.* 4.

Nota, A Stranger in the Houſe brings it not within Statute.

2. Rob-

2. Robbing any Person by Day or Night, any Person being in the same House, and put in fear.

Principal oust of Clergy by 1 *E.* 6. *c.* 12. in all cases, but challenging twenty; and by *Stat.* 5 & 6 *E.* 6. if in a foreign County Clergy upon Examination taken away.

Accessaries, Clergy taken away by 4 & 5 *Ph.* & *Ma.* *c.* 4. in all cases.

3. Robbing any Person in his Dwelling-house, the Owner, his Wife, or Children being in any part of the House, or within the Precincts thereof, though there be no putting in fear. And this extends to Booths in Fairs.

In *Pyracy*, Clergy not allowable. V. Mo. 756. ante 77, 78.

Principal oust of Clergy by 5 & 6 *E.* 6. *c.* 9. in case where the Offender is found guilty.

Prin-

Principal thereof in other cases shall have Clergy; as in standing Mute, challenge *ultra* twenty.

Accessary oust by *Stat.* 4 & 5 *Ph. & Ma. c.* 4.

4. Robbery to the value of 5 *s.* out of any Dwelling-house or Out-house thereunto belonging, though none in the House, by *St.* 35 *El. c.* 39.

Principal oust of Clergy in case of Conviction, not of standing Mute.

Accessary shall have Clergy.

Un enter in le lodging Sir H. Hungate *parcell de* Whitehall, *nul person esteant in lodging, mes in autre part de* Whitehall *& infreint un chamber & prist biens: Rule per advise de Justices,* 1. *L' Indictment doit estre pur infreindre le meason de Roy vocat* Whitehall *& pur Embleer les biens Sir* H. H. *divers persons esteant in le meason: Car nient semble al Chamber in Inne de Court, lou chescun ad several property.* 2. *Que ceo fuit deins le Stat.* 5 & 6 E. 6. *& l' Enditement l' accordant.* 3. *Que in Inditement*

sur

ſur Stat. 23 H. 8. *vel* 5 & 6 E. 6. *doit eſtre actual breaking & auxi Robbery.* 4. *Que ſi laron enter in meaſon le doores open, & infreint Chamber, & priſt biens, eſt deins le Stat.* 5 E. 6. *d' ouſter luy de Clergy.*

8. Larceny without any of theſe Circumſtances,

Horſe-ſtealing ouſt of Clergy, by 1 *E.* 6. *c.* 12. 2 & 3 *E.* 6. *c.* 33. Principal ouſt in all Caſes;

Acceſſary ouſted in no Caſes.

But other Larceny, not being Robbery nor Cut-purſe, have Clergy.

9. In Rape, Clergy ouſt by Stat. 18 *El. c.* 7.

So in Buggery. V. 12 Co. the Caſe of Buggery.

10. Though the Offence be within Clergy, yet if he had formerly his Clergy and were burnt in the Hand, the Stat. of 4 *H.* 7. *c.* 13. ouſts him of Clergy, unleſs he were a Perſon in Orders, and then he muſt produce his Certificate preſently, or by a Time prefixed.

And ſee the Stat. 34 & 35 *H.* 8. *c.* 14. for the manner of the Certificate of ſuch Convictions and other Attainders. And

And though Stat. of 32 *H.* 8. *c.* 1. hath put Men in Orders in the ſame Condition with others, in reference to Clergy; yet as to this Point of the Stat. 4 *H.* 7. the Clauſe of the Statute 1 *E.* 6. *c.* 12. doth give a Perſon in Orders his Clergy the ſecond time in all Caſes, but in caſe of 1. Challenge above twenty; 2. Outlary.

3. When Clergy ſhall be allowed. V. 3 Inſt. 69.

1. Now the uſe is not to put the Party to challenge his Clergy till he hath pleaded, and the Inqueſt thereupon taken: 1 And. 114.
   1. For advantage of the Party, if acquitted. St. P. C. fo. 131.
   2. For advantage of the King for Forfeiture, if Convict.
2. It may be allowed in Diſcretion, though the Party challenge not.

Allowed under the Gallows, or where Judgment of *Paine fort & dure* given, or where challenge above twenty.

V.

V. *Crom. Jur.* 126. *Allow south Gallows per Just. B. R. mes nemy Gaol-Delivery: Mes pnt' apres Judgment devant adjournment*, Dy. 205.

Licet Ordinary return non legit, *& est record, & repry al autre Sessions & tunc legit, avera benefit de ceo*, Dy. 202. 34 H. 6. 49 Coron. 20.

4. The Judge.

The Ordinary is but Minister, the Judge at Common Law is the Judge when and where to allow it, and of the Reading, 9 *E.* 4. 28. *Coron.* 32.

5. What the Effect of Clergy allowed.

1. In ancient Time the Consequent was delivery to the Ordinary, either to make Purgation, or *absque Purgatione*, as the Case required.

But by Stat. 18 *El. c.* 7. now only burnt in the Hand, which hath these Effects;

1. Enables the Judge to deliver him out of Prison; but yet if he see cause, he may detain him till he find Sureties of good Behaviour:

And

And by the Stat. 3 *H*. 7. *c*. 1. If Clergy within the year, he is to be bailed or committed at discretion, till the year past.

2. It gives him a Capacity to purchase Goods, and retain the profits of his Lands. Foxley's Case, 5 Rep.

But the Goods he had at the time of the Conviction are forfeit.

3. It restores him to his Credit. *Hob*. 377. *Searle's* Case.

Le Stat. 25 H. 8. *que toll Clergy del persons arrain in forrein County sur examination extent solment al tiels felonies d'ont Clergy oust per Stat.* 23 H. 8. *& nemy per subsequent Stat. Et pur ceo rule in* Anne Cole's Case, *Si feme infreint meason in County de* S. *in day time, & prist biens South value de* 10 s. *& eux import in County de* D. *& la arraine, el serra arse in maine: quia nul mister in favor come require per le Stat.* 23 H. 8.

Robbery de value de 10 d. *& import in forrein County & la arrain est Pe-*

tit Larceny. 2 Jac. Moore's Rep. *quia le Stat.* 25 H. 8. *extend ſolment al ceſtuy que demand Clergy, que neſt in caſe de Pet. Larceny.*

Indite de Robbery in quadam via pedeſtri *avera Clergy: Car le Stat. parle de Robbery* in vel prope altam viam regiam. *T.* 38 *H.* 8. *Moore* 5.

Pleas

Pleas to the Felony.

1. Demurrer.
2. Pleas in Abatement and Barr.
3. The General Issue.

1. For Demurrer.

It amounts to a Confession of the Indictment, as laid; and therefore if the Indictment good, Judgment against the Prisoner, and Execution, C. West. 1. c. 12.

2. For Pleas in Abatement.

If Prisoner plead *Misnosmer* of his Surname unto an Appeal, it goes in Abatement; but in case of Indictment he shall be put to answer the Treason or Felony. St. P.C. 118. 1 H. 5. 5. 4 Leon. 121. 2 Rolls 225. 2 Inst. 665, 670.

But Misnosmer of the Christian Name goes in Abatement; and if it be confessed by the King's Attorney, or found, the Indictment falls. 11 *H.* 4. *Coron.* 88.

But then he must give his true Name, and by that Name he may be forthwith indicted.

Pleas in Barr.

Auterfoits acquit.

V. Foreign Plea pleaded. Post. 225. V. Keel. 25, 26, & 30, 52. 1 Jones. 198. Sir W. Withipole's Case.

Auterfoits acquit:

1. If a person be acquitted upon an insufficient Indictment or Appeal, yet upon a new Indictment he may be arraigned for the same Felony. 4 *R. Vaux*'s Case, *licet Judgment done.*

St.P.C.f.105, 106.

2. *Auterfoits acquit* of one Felony, no Barr to an Indictment or Appeal of another Felony, *&c.* though committed before the Acquittal.

V. 27 Ass.Pl. 10. 8 H. 5. 6, 7. Keel. 25, 26.

3. *Auterfoits acquit* as Principal, no Barr to an Indictment against him as Accessary to the same Felony after; But it seems he cannot be after indicted as Accessary before. *Stamf.* 105.

4. In an Appeal of Death or other Felony, *Auterfoits acquit*, upon an Indictment for the same Felony, was a good Barr in all Cases; therefore if

if an Appeal was pending, the Court would ſurceaſe the Arraignment of the Priſoner upon an Indictment till it was determined: Or though no Appeal pending, yet in caſe of death, would ſurceaſe till the year paſt.

But at this day *Auterfoits acquit* in an Indictment of Death, no Barr to an Appeal, by Stat. 3 *H. 7. c.* 1. for the Priſoner notwithſtanding the Acquittal; but in other Appeals it ſtands a Barr to an Appeal.

5. But *Auterfoits acquit* in an Appeal, Barr to an Indictment of the ſame Felony. V. Keel. Armſtrong aud Liſter's Caſe.

1. Unleſs the Appeal be erroneous in Subſtance.
2. Or unleſs the Appeal be by a wrong Perſon.
3. Unleſs the Acquittal be by Battel; for in theſe caſes he may be indicted again.

6. He that pleads this Plea, need not have the Record *in poigne*, becauſe it goes in Barr. 3 *E.* 3. *B. Coron.* 217.

7. Though there be Variance between the Indictment, *&c.* yet if it be ſuch as may admit an Averment to be the ſame, yet it may be pleaded.

Variance in the Name if *Conus per une name & auter.*

Variance in the day of Felony ſuppoſed to be committed.

Variance in the place, but by the Opinion of 4 *H.* 5. acquit of Larceny in one County, no Barr in another.

Variance in l'offence auterfoits acquit, attaint de murder ou manſlaughter turr. Pet. Treaſon.

Auterfoits Convict or Attaint. 4 Co. Wigg's Case.

1. Where a Barr to the ſame Felony.

2. *Auterfoits attaint* of the ſame Felony in an Appeal, Barr to an Indictment; for the Effect is obtained, the death of the party; But *vide* no Barr in Appeal. C. P.C. 213.

2. *Auterfoits convict* by Verdict or Confeſſion of Manſlaughter in an Indictment, and had Clergy, Barr in Appeal, though it be of Murder, for the fact the ſame in both, though the offences differ in degree. 4 Rep. 45. Wigg's Caſe.

Auterfoits acquit ſur inſufficient enditement, & nul Judgment done, neſt plea: mes auterment eſt ſi Judgment ſoit done tanque ceo reverſ. Vaux's Caſe, 4 *Rep.*

2. Where a Barr to an Arraignment for another Offence.

S. P.C. 107. 1. *Auterfoits attaint* of Felony is no Barr to arraign him of Treason committed before the Felony, for the King's Interest.

C. P.C. 213. And it seems if the Treason was committed after the Felony, then he shall be arraigned of the Treason, for the Offence is different.

2. *Auterfoits attaint* of one Felony, barr to an Arraignment of Felony: but this hath these Exceptions:

1. Where the first Attainder is pardoned, there he may be arraigned for the former Felonies though committed before.

S P.C. 66. 107. 2. In case of Appeal he shall be arraigned at every one of their Suits, notwithstanding he be attaint at one Suit.

The like it seems upon Indictment of Robbery, because by the Stat. the party is to have restitution.

v. K. & C. 94.

3. *Auterfoits convict*, and had Clergy after Stat. 25 *E*. 3. *c*. 5. had been a barr to an Arraignment for another Felony, though not within Clergy. *Dy*. 214.

But now by Stat. 8 *El*. *c*. 4. after Purgation, and 18 *El*. *c*. 7. after burning in the Hand, he ſhall be put to anſwer former Felonies not within Clergy, or for any Offence after Clergy allowed.

And note, that he that pleads a Plea in barr to an Indictment or Appeal that confeſſeth not the Felony, ſhall plead over to the Felony; otherwiſe if it confeſs the Felony; as Pardon, or Releaſe.

V. 12 Co. the Case of Pardons, and 4 Co. and 6 Co. divers Cases of Pardons, &c.

Pardons.

3. PArdons Are either of Course and Right; such are:

1. For a person Convict of Manslaughter, or *se defendendo*.

S. P. C. 102.

2. An Approver that vanquisheth the Appellee.

Pardons of Grace.

1. Some things requisite to their allowance by Statute.

1: By Stat. 13 *R.* 2. *c.* 1. Pardon of Murder, Rape, or Treason must be especially expressed in the Pardon, otherwise it ought not to be allowed in such Cases. *Vide si extend al Petit Treason & Accessories*, 22 *E.* 4. 19 Lamb. 293.

2. By Stat. 10 *E.* 3 *c.* 2. there must be Surety of good abearing, otherwise the Charter void; but a special *Non obstante* may prevent it.

2. Matter

2. Matter at Common Law considerable.

1. Charter of Pardon no barr of an Appeal: and if the party be utlawed in Appeal, and the King pardon, he ſhall have a *Scire Facias*, againſt the Appellor, who may pray Execution notwithſtanding ſuch Pardon; but if returned *Scire feci*, and appears not, then Appellee ſhall upon the Pardon be diſcharged. Stam f. 104.

2. Pardon of all Felonies is no barr to Execution, if the Felon be attaint; yet an Exception of all Burglaries excepts the Burglary for which the party is attainted. V. 6 Co. the Caſe of Pardons.

3. Pardon of all Attainders not good, without a Pardon of the Felony.

4. The Pardon of Felony reciting in the Pardon that the party is indicted, and in truth he is not, this is void.

5. The

C. P. C. 337. V. 5 Co Biggin's Case.

5. The King may pardon the burning in the hand in Appeal, & *l'imprisonment per ceo discharge.*

6. Sil apres infreint Peace Sire fac. gist a repealer le Pardon, & ser. pendu pur primer offence per le Stat. 10 E. 3. 3 H. 7. 7. *vizt. nisi soit non obstante le Stat.*

7. Pardon de tout Felonies per A. & B. *vel eor. alter. commit pardon several.* Dy. 34. 22 E. 4. 7.

Pleading the Pardon.

He that pleads a general Pardon by Parliament, wherein are Exceptions, must averr that he is none of the persons excepted.

But of a General Pardon by Parliament, without Exception, the Court *ex Officio* must take notice.

He that pleads a particular Pardon,

1. Must shew it under Seal.

2. Must have a Writ of Allowance, *q'il ad trove Surety scm. Stat.* 10 E. 3.

Mes

Mes lou nul briefe d'allowance nul mort, 5 E. 4. 132.

3. If variance, he must averr that the same person.

A Peer of the Realm may be indicted for Felony or Treason in B. R. and may plead his Pardon before he pleads non cul. 1 Rol. R. Lord Norris's Case.

But a common Person can't plead non cul. after a Pardon pleaded. V. Palmer's R. Potter's Case.

A Pardon of all Felonies does not discharge Piracy. Ante 77. Pardon of Petit Treason, V. Dyer 235. V. 6 Co. Case of Pardons.

General

General Issue.

THus far of Pleas in Barr upon Indictments or Appeals; now we come to Pleas to the Fact, Not Guilty.

1. Regularly he that pleads any special matter in Bar in Cases Capital, that confesseth not the Felony, notwithstanding the Plea found against him, the Felony shall be enquired of, and therefore he shall plead over to the Felony.

2. The immediate consequent of this Plea is Trial; and that is either

By the Country.
By Peers.
By Battel.

Trial per Patriam.

1. Concerning Trial *per patriam*; and therein, In Petit Treason V. 2 Co. 27.

1. Where Issues tried.
2. What Process against Jury.
3. Before whom.
4. Challenge.
5. Evidence to be given.
6. Verdict.

1. Where tried.

1. For Trial of foreign Treasons and foreign Accessaries, or stroke in one County, and death in another, *v. supra* in Indictments.

2. For Trial of foreign Pleas by Stat. 22 *H.* 8. *c.* 14. made perpetual by 32 *H.* 8. *c.* 3. Foreign Pleas pleaded by a person indicted of Felony, and triable by the Country, shall be tried where the party is arraigned; but it is now in Treason triable in the foreign County by vertue of Stat. 1 & 2 *Ph.* & *Ma.* *c.* V. Foreign Plea pleaded in Treason. C. P. C. 27.

2. *Pro-*

2: *Process against the Jury.*

1. *Nota*, The Justices of Goal-Delivery have their Pannel returned by the Sheriff, without any Precept, by a bare Award; but Justices of Oyer and Terminer not.

V. Keel. f. 7. ante 217.

2. By good Opinion, the Justices of Peace, or Oyer and Terminer, cannot make their *Venire Facias* to try an Issue retornable the same Sessions; but Justices of Goal-Delivery clearly may.

3. If several persons Arraigned upon an Indictment or Appeal, and they severally plead Not Guilty, the Plaintiff may take out one *Venire Facias*, or several.

S. P.C. f. 155.

4. If the *Venire Facias* be joint, Challenge by one drawn against all.

Com. 100.

5. Though Pannel be joint, and *Tales* awarded, yet Court of Goal-Delivery may after sever the Pannel to prevent that inconvenience.

6. In Appeal, if after Issue, Plaintiff tries it not, a *Venire* by *Proviso* may be for the Defendant; yet upon that *Venire* Plaintiff may have a *Tales*.

3. *Tales*.

1. If a full Jury appear not, or be challenged in Indictment or Appeal, the Plaintiff may have a *Tales*.

2. Upon Indictment or Appeal, because Defendant may challenge peremptorily, *Tales* may be granted larger than the principal Pannel, as forty *Tales*. 14 *H.* 7. 7.

3. But the succeeding *Tales* must be less than the former, unless the first be quashed, and then the same number with that which is quashed.

4. If any of the Jury die before sworn, a new *Tales* grantable.

3. *Before whom.*

Nor any Challenge to the Array. Post 261.

1. A *Nisi prius* not grantable where the King Party, unless prayed by his Attorney.

2. By Stat. 14 *H.* 6. *c.* power to Justices of *Nisi prius* to give Judgment in Felony and Treason tried before them.

3. By Stat. 42 *E.* 3. *c.* 11. Enquest in Assize and Gaol-Delivery may be taken before the Pannel returned in Court, but not in other Cases.

Challenge.

V. Keel. 9 36, 54.

4. *Challenge* of Array or Polls.

1. *Ex parte Regis* by Stat. 33 *E.* 1. *c.* the King ſhall not challenge without Cauſe; but yet he is not compellable to ſhew the cauſe till the Pannel peruſed.

2. *Ex parte priſonarii*, the Challenge is either peremptory, or upon Cauſe.

After a Challenge to the Polls, no Challenge can be to the Hundred. 2 Rol. ab. 636.

1. Peremptory Challenge.

1. A peremptory Challenge not allowable, but where the life of a Priſoner comes in queſtion, and therefore not upon collateral Iſſues.

Alſo after four Jurors ſworn, there can't be any Challenge to the Hundred ibid.

2. At Common Law he might have challenged peremptorily 35. under three full Juries; and if he challenged above, he ſhould have Judgment to be hanged. 3 *H.* 7. 12.

But by Stat. 22 *H.* 8. *c.* 14. made perpetual, by 32 *H.* 8. *c.* 3. it is reduced to 20; and now if he challenge above 20, he ſhall not be therefore hanged, or forfeit, but his

S 2 Chal-

C. P.C. 227. Challenge over-ruled, and he put upon his Trial; yet *vide Statutes, semble contra.*

C. P C. 27. 3. In Case of Treason and petty Treason, the Challenge of 35 restored by Stat. 1 & 2 *P.* & *M.* c. 10.

w.ch was taken away by 33. H. 8. 23.

N. B. In Appeal of Mansl ughter, the Defendant may cha enge twenty peremptorily as well as upon an Indictment. Mo. 12.

2. Challenge for Cause; we mention but three;

1. Cause of Insufficiencies. By the Stat. 2 *H.* 5. *c.* 3. 40 *s. per Ann.* required in County; but this, as to Aliens, corrected by 8 *H.* 6. *c. ult.* in Cities by Stat. 23 *H.* 8. *c.* 13. Goods to the value of 40 *l.*

2. Unindifferency.

Indictor not to be of Jury by Stat. 23 *E.* 3. *c.* 3.

3. In reference to an Alien, *& medietat' linguæ*, where

C P.C. 27. 1. In no Case Indictors ought to be *de medietate linguæ.*

2. In Treason trial *per medietat' linguæ repel per Stat.* 1 *&* 2 *Ph. & Ma. que ad repel* 21 *E.* 3. in that Case.

3. In Appeal by an Alien against an Alien no *medietat' linguæ*.
4. *Scot* no Alien to have *medietatem linguæ*.
5. The Jurors need not be of the same Nation, but any Aliens.
6. He that will have advantage of Trial *per medietatem linguæ* must pray it, otherwise he cannot have benefit by way of Challenge. *Dy.* 304, 357.
7. *Egyptians* excluded from the Trial *per* 1 & 2 *Ph. & Ma. c.* 4.

See a Challenge by a Peer, for that no Kt. was returned. Dy. 208. C. P. C. 27. Post 267.

No Challenges are to be on Trials by Peers. Keel. 54.

Where the King is party no Challenge to the Array. 2 Rol. abr. 645. V. ibid 659.

Evidence.

5. EVidence to the Petit Jury.

1. In Case of Treason

See now the Stat. 7 W. 3. c. 3. for regulating Trials in Cases of Treason, &c.

There must be two Accusers or Witnesses by Stat. 1 *E.* 6. *c.* 12. & 5 *E.* 6. *c.* 11. and this stands notwithstanding Stat. 1 & 2 *Ph.* & *Ma.* *c.* 11. but only in Case of Treason for counterfeiting Coin.

These Witnesses must not be only by hearsay.

2. In Case of Felony.

1. What allowed as Evidence:

1. By Stat. 1 & 2 *Ph.* & *Ma.* *c.* 13. & 2 & 3 *Ph.* & *Ma.* *c.* 10. the Justice hath power to examine the Offender and Informer.

2. The examination of the Offender not upon Oath, but subscribed by him.

3. Examination of others must be upon Oath.

4. This must be certified by the Justices.

1. If it be but a small Felony, to the Sessions.

2. If

2. If it be a great Felony, &c. to the next Gaol-Delivery.

5. These Examinations, if the party be dead or absent, may be given in Evidence.

But Prudence to have the Justice or his Clerk sworn to the truth of the Examinations.

6. But Examinations taken upon a Cause of Divorce for a forcible Marriage, not allowed to be read upon an Indictment upon 3 *H.* 7. for the same Marriage.

2. By whom.

1. Wife, or her Examination, not to be used for or against her Husband. Dal. c. 111.

2. The Examination of an Infant of Thirteen, nay of Nine, allowed in some Cases.

3. One attaint of Conspiracy, Forgery, or Perjury, not allowed a Witness.

4. One duly set on Pillory. C. P. C. 219.

3. In what manner.

1. Evidence for the King always upon Oath:

C. P.C. c. 22. But Evidence for the Prisoner not upon Oath; yet no known Law that restrains it: But by some Statutes in some Cases, Evidence for the Prisoner upon Oath, as 31 *El.* c. 4. 4 *Jac.* c. 1.

The Confession of the Offender taken upon Examination, Evidence with Oath not of the Informer.

4. Where Evidence maintains the Indictment.

1. If the Indictment be of a Felony, *&c.* at one day, though the Evidence be another day, either before or after, the Jury may find generally against Prisoner, and leave the person that is interested in point of time to falsifie; Or the Jury may find the true day upon their Verdict, and then the forfeiture shall relate thither.

Co. Lit. 283.

C P.C. f. 230
Post. 270.

So in Treason per Keelings Rep 15, 33.

2. If the Indictment lay the Felony at one place, the Evidence proving the Fact at another place in the same County, maintains the Indictment.

3. If

3. If the Indictment and Evidence differ *in specie mortis*, then it maintains it not: as Indictment of Poisoning, Evidence of stabbing maintains it not.

But if the Indictment be of poisoning with one kind of Poison, and the Evidence of another; or of killing with a Dagger, and the Evidence is of killing with a Staff, yet it maintains the Indictment; for it agrees in substance and kind. C. P. C. 135. 9 Rep. Mackally's Case.

The like of Accessaries before, though the Poison or Weapon different.

4. Indictment that *A.* gave the mortal blow, and *B. C.* and *D.* were *præsentes & abettantes*; Evidence that *B.* gave the blow, and *A. C.* and *D. præsentes & abbettantes*, yet it maintains the Indictment. 9 Rep. Sanchar's Case.

5. Indictment of *A.* as Accessary to *B.* and *C.* Evidence proves him Accessary only to *B.* maintains the Indictment.

6. Indictment of Murder, *ex malitia præcogitata*; Evidence of malice

lice in Law, as killing an Officer, or without Provocation, yet maintains the Indictment.

7. Indictment upon Statute of Stabbing, 21 *Jac.* Evidence that the dead ſtruck firſt, yet Evidence to maintain the Indictment for Manſlaughter generally. *H.* 23 *Car. Harwood*'s Caſe.

8. Two indicted as Principals, Evidence proves one Acceſſary before, he ſhall be diſcharged of that Indictment. 26 *H.* 8. 5.

9. *Vide Stat.* 21 *Jac. c.* 27. Mother endeavouring to conceal the death of her Baſtard-child, ſhall ſuffer death as in caſe of Murder, unleſs ſhe prove by one Witneſs that the Child was born dead.

V. Keel. 32.

Verdict.

Verdict.

6. VERDICT in Cases Capital.

1. It must be given, and the Jury cannot be discharged till it be given. St. P. C. 165.

2. It must be given openly in Court, and no privy Verdict. Otherwise on Informations at the Assizes. 1 Ventr. 95.

3. It may be found Specially; as an Indictment of Murder, the Jury may find him Guilty

1. Of Manslaughter:
2. *Per Infortunium:*
3. *Se Defendendo.* V. 3 Inst. 220. and Stamf. 15.

But then they must find the manner of it, that the Court may judge thereof; so for the value or the manner of the Larceny. If they cannot agree, they are to be carried in Carts. 1 Ventr. 95.

Trial by Battel, Peers.

NOw we should come to Trial By Battel. V. the Judgment herein. 2 Inst. 182.

By Peers: *V.* the whole Process thereof, *C. Pl. Cor.* 27. V. ante 261.

Judg-

Judgments in the several Cases.

V. 1 H 7. 24. and Cases in Parliament. 131, and 186. C. P. C. 218, 219.

I. IN High Treason.

1. In all Cases, except counterfeiting Coin, drawn, hang'd, Entrails taken out and burnt, Head cut off, Body quartered, Head and Quarters hang'd up.

V. 3 Keb. 278. Cro. Car. 278. V. ante 19

2. In counterfeiting Coin, drawn and hang'd: *Issint per tonsure*. Dy. 230.

But the Judgment of a Woman in those cases, drawn and burnt.

II. *In Petty Treason.*

1. For a Man, drawn and hang'd.
2. For a Woman, drawn and burnt.

III, *In Felony.*

Hang'd till dead: And this cannot be by the King altered to beheading.

IV. *In*

IV. *In Petty Larceny.*

To be whipt.
He forfeits Goods.

V. *Death per Infortunium.*

No express Judgment; yet forfeits Goods.

V. 1 Rol.Rep. 217. where the Body of one drowned, can't be found.

VI. *Death se defendendo.*

No express Judgment; yet forfeits Goods.

VII. *Misprision of Treason.*

Forfeits Goods; Forfeits Profits of Land during Life; perpetual Imprisonment.
Vide for Seisure of Goods.
1. Not before Indictment.
2. Not removed before Attainder. 1 *R.* 3. *c.* 3.

V. On a conviction of Conspiracy 3 Inst. 222.

V. Keel. 29 a. Judgment for Trespass, tho' the Indictment was Felony, and see ibid 77. several Judgments on one and the same Verdict.

Fal.

Falsifying Attainders.

3 Inst. 231. 1. By the Party, by Writ of Error.

2. By others falsifying it.

3 Inst. 130. 1. A Purchaser may falsifie an Attainder of the Vendor by Utlary or Confession in the point, if he purchase before the Attainder, and after the time of the Felony supposed.

2. A Purchaser *mesne* between the time of the Felony committed, and the Attainder by Verdict, cannot falsifie in the point of the Offence, but he may for the time.

3 Inst. 231. 3. If the Attainder was by such as had no good Commission, the Party himself may falsifie the Attainder. *Casus Com. Leicest.*

2 Inst. 183. 4. If the Principal attainted, and then the Accessary and Principal reverse the Attainder, the Attainder of the Accessary is *eo ipso* avoided, and his Heirs may have *Mortdanc'* against the Lord by Escheat.

5. At-

5. Attaint of Treason or Felony, and then the Treason is pardoned by Act of Parliament, the Party or his Heir shall falsifie Attainder by Plea. V. 3 Inst. 232.

6. In Case of Goods.

1. *Fugam fecit* found by the Coroner cannot be falsified, though upon his Arraignment it be found he did not fly: But if the Indictment be void or insufficient, no Forfeiture.

2. A man indicted before Justices of Oyer and Terminer, acquit by Verdict, and found he fled, and the particulars of his Goods found, they may be traversed by any that hath property. S. P. C. 148. 3 Inst. 232.

3. Default till Exigent, though after acquitted, Goods forfeited; for it is a *fugam fecit* in Law.

But if the Indictment, Appeal, or Process insufficient, the Forfeiture saved; so if reversed by Error, or pardoned before Exigent.

Nota, Flight or Exigent in case of Petty Larceny, forfeits Goods.

Execution

Execution and Reprieve.

C. P. C. 212, 217. V. Stamf. 13. and 35 H. 6. 68. acc. Sed V. 27 Ass. pl. 41. and F. N B. 144.

1. THE Execution must be pursuant to the Judgment, and cannot be altered by the King, as from beheading to hanging.

V. 12 Co. 130.

2. But King may pardon part of the Execution; as in Treason, he may pardon all but beheading.

V. Keel. 77.

3. It must be done by the proper Officer.

C. P. C. c. 7. 217 S. P. C. 198.

4. If a Woman, convict of Treason or Felony, be quick with Child, she shall have one Reprieve, but not a second time.

How Execution is awarded on Attainders by Outlawry, vide Keel. 13.

F I N I S.

An Alphabetical Table of the Principal Matters of the Book.

A

ABjuration, ousted, 228.
Accessary, who, 215. *before*, 217. *after* 218. *Arraignment*, 118. 205. 221.

Affray, 135.

Ale-houses, 147.

Appeal where prosecuted, 179. *of what Matters*, 180. *of Death*, 181. *of Robbery*, 184. *of Rape*, 186. *Process in Appeal*, 187. *Count in Appeal*, 187. *Pleas in Appeal*, 189. 190.

Apprentice vid. *Servants*.

Approver, what, 192. *who may be*, ibid. *in what Cases*, 193. *of what Offences*, ibid. *before whom*, 194. *how demeasned*, ibid. *Process*, 196. *Proceedings upon Trial*, ibid. *after Trial*, 197.

Arraignment, in what manner, 212. *where*, ibid. *of Principal and Accessary*, 213, 221.

Arrest, by a private Person, commanded by Law, 89. *permitted*, 91. *by Officer*, 92.

Arson, 85.

Auterfoits acquit, 244.

convict. 247.

B.

B*Ail, what*, 96. *in what Cases*, 97. *by whom*, 103. *virtute brevis*, ibid. *ex officio*, 104.

Bakers, 143.

Raron and Feme, 65.

Barretry. v. *Champerty*.

Bigamy, 121.

Breach of Peace, 135.

of Prison, 87. v. *Rumper Prison*.

Bribery.

Bridges, 143.

Buggery, 117.

Burglary, 79.

Burning, Arson, 85.

C.

C*Hallenge*, 259.

Champerty, 151.

Chance-medley, 31.

Clergy,

Clergy, 229.
Clipping Money, 19.
Coin, Treason concerning it, ibid.
Commitment, 94.
Concealment of Felony, 129.
Conspiracy, 183, 269.
by Juries, ibid.
Coroner, 170.
Counterfeiting Coin, 19. *Great Seal*, 18.
Courts, 156,

D.

Deceit and Cozenage.
Demurrer, 243.
Deodand, 33.
Drunkenness. 149.

E.

Egyptians, 123.
Escape in the Party, 111. *in a Stranger*, 112. *in an Officer*, 113.
Evidence, 203, 262.
Execution, 272.
Extortion, 151.

F.

Falsifying Attainder, &c. 270.
Felo de se, 28.
Felony by Common Law, 26.
by Statute. 127.
Forcible Entry, 138.
Detainer, 139.
Forfeiture, 269.
Forgery, 124, 151.
Forestalling, 124, 152.

G.

Gaol-Delivery, 158.
General Issue, 254.
Grand Jury, 202.
Graves, 67.
Guest, 64.

H.

Heresie, 3 *to* 5.
High-ways, 144.
Homicide, per Infortunium, 31. *ex necessitate*, 35. *in execution of Justice.* ibid, *in advancement of Justice*, 36. *upon private Interest, justifiable*, 39. *excusable*, 41.
Hue-and-Cry, 90,

I.

Imprisonment. v. *Arrest.*
Indictment, where requisite, 198. *by whom,* 201. *of what Matters,* 203. *before whom,* 205. *the Form,* 206. *proof,* 208.
Informations 208.
Ingrossing, 152.
Inns, 146.
Judgment in several cases, 268.
Jurisdictions, 156.
Jury. v. *Process & Challenge, & c.*
Justices of Assize, 164.
Of Peace, 165.
Of Gaol-Delivery, &c. 158, 161, 175.

L.

Larceny, Simple, 60. *Mixt,* 71. *from the* **Person,** ibid. *from the House,* 76.
Leet, 175.

M.

MAihem, 119, 133, 180,
Malice, 44.
Manslaughter, 56.
Marriage of two Husbands or two Wives, 121, 122.
Masters & Servants. v. *Servants*.
Medietas Linguæ, 260,
Misnosmer, 243.
Misprisions, 126. *Negative, of Treason*, 127. *of Felony*, 129. *Positive*, 131.
Mittimus, 94.
Murder, 43.
Mute, 225. *what standing mute*, 225. *the consequence*, 226.

N.

NOn compos, &c. 10, 28, 43.
Nusances, 134, 143.

O.

OFfences, the kinds, 1. *against God*, 3: *against Man, Capital*, 9. *not Capital*, 126. *of inferior Nature*, 134. *by Statute*, 151.
Oyer and Terminer, 161.

P.

P.

PAin fort & dure, 225.
Pardon of Course, 250. *of Grace*, ibid. *Pleading*, 252.
Perjury, 151.
Priacy, 77.
Pleas, Declinatory, 228. *to the Felony*, 243. *in Abatement*, ibid. *in Bar*. 244.
Powdikes, cutting, 125.
Præmunire, 22.
Priests and Jesuits, 123, 154.
Present and absent.
Principal and Accessary, 215. *Arraignment*, 221.
Prison, 107.
Process upon Appeals and Indictments, 202. *against Jury*, 256.
Provocation, 57.

R.

RApe, 117, 118, 186.
Recusancy, 123, 154, 155.
Religion, 153.
Rescue, 116.
Restitution, 140, 141.
Riding armed, 142.
Riot, 137.
Robbery, 71.
Rogues, &c. 123, 124.
Rumper Prison, 87, 107.

S.

S.

SAnctuary, ousted, 228.
Se defendendo, 41.
Servants, 62, 63, 66, 124.
Sheriff, 173. *his Turn*, ibid.
Stabbing, 58, 59.
Subornation, 151.

T.

TAles, 257.
Theft-bote, 130.
Tippling, 147.
Treason, High-Treason, 9.
Petit Treason, 23.
Trial per Patriam, 255. *by* Battel, *by Peers*, 261, 267.
Turn of the Sheriff, 173.

V.

VErdict, 267.

W.

WArrant. v. *Arrest*, 95, 116.
Witchcraft, 6.

FINIS.

A Short TREATISE TOUCHING SHERIFFS Accompts.

Written by the Honourable Sir *MATTHEW HALE*, Kt. Sometime Lord Chief Justice of His Majesty's Court of *King's-Bench*.

To which is added,

A Tryal of WITCHES,

At the Assizes held at *Bury St. Edmonds*, for the County of *Suffolk*, on the 10th of *March* 1664, before the said Sir *Matthew Hale*, Kt.

LONDON,
Printed for *D. Brown*, *J. Walthoe*, and *M. Wotton*. 1716.

FOR

The Right Honourable

THE

LORD HIGH TREASURER

OF

ENGLAND,

And the

CHANCELLOR

Of the

EXCHEQUER.

ACcording to my Promiſe to you Lordſhips, I have given a large Hiſtorical Narrative of the Sheriffs Acccompts for the Annual Revenue of their Countries: Wherein ſome things may occur that may be uſeful to the underſtanding of the Sheriffs Accompts, and many other old obſcure

 Records,

Records, and some things incidently opened, that have been formerly obscure and scarce intelligible, yet fit to be known. Some things also relating to the difference between the Auditors of the Revenue, and the Officers of the Pipe. There may be some Mistakes of my own, I confess, in a Matter of so great intricacy, perplexity and obsoleteness, which I could not easily correct, in the Country, because many of my Papers are at *London* that concern this Business, and, I fear, hardly to be retrieved into a due order, in regard of the late distraction. And here may be some Mistakes in the Transcriber, which at this distance I could not examine. But, possibly, notwithstanding these Mistakes, Your Lordships may find something that may be useful, and when I wait upon you, I shall review and correct.

Your Lordships

humble Servant.

A Short TREATISE Touching Sheriffs Accompts.

CHAP. I.

Touching the Ancient and Modern Weight and Allay of Sterling Silver.

IT will be neceſſary for the better underſtanding of Sheriffs Accompts, eſpecially in the elder times, to examine theſe matters, *viz.*

I. Touching the Denomination, Weight and Allay of Sterling Money, the Corruptions thereof in both, and the Reme-

dies that have been formerly applied for the reformation of these Corruptions.

II. Concerning Firmes, their nature, and how they were answered in former times. The first shall be the subject of this Chapter, the second the subject of the next.

Concerning the former of these, I shall apply my self singly to the business of Silver Coin, because that was the usual Species wherein the King's Firmes were commonly answered.

And first concerning the Coin of Silver, there are these things considerable therein.

1. The Authority or Power that gives it its Stamp, Weight, Denomination and Value.
2. The Matter of it.
3. The Weight and Denomination.

As concerning the first of these, it is, without all question, the inherent Regality and Prerogative of the Crown, to give the Currantness, Allay, Weight, Denomination and extrinsick Value to the Coin of this Kingdom: and as it is a part of his Regality and Prerogative, so it is a part of his Regal Revenue, which is called the King's Seigniorage, or Royalty, or Coinage, *viz* ordinarily, on every pound weight of Gold, the King had for his Coin 5*s*. out of which he paid to the Master of the Mint, for his work, sometimes 1*s*. sometimes 1*s*. 6*d*. Upon every pound weight of Silver, the Seigniorage, or Coinage, answered to the King, in the time of King *Edw*. 3. was 8 peny weight, *pondere*, which about that time amounted to 1*s*. out of which he paid sometimes 8*d*. sometimes 9*d*. to the Master. In the

the time of *H.* 5. the King's Seigniorage of every pound weight of Silver was 15*d.* See *Rot. Parl.* 9 *H.* 5. *pars* 2. *N.* 15. although the Authorization, Denomination and Stamp of Coin was undoubtedly the King's Right, yet it appears by *Roger Hawood*, that in the troublesome times of King *Stephen*, *viz. An. Dom.* 1149. *Omnes Potentes, tam Episcopi quam Comites & Barones, suam faciebant monetam.* But *Henry* the second coming to the Crown, remedied this usurpation of the Baronage: *Novam fecit monetam quæ sola recepta erat & accepta in regno.* And since that time, the exercise as well as the right of coining of Money in the Kingdom hath remained uninterruptedly in the Crown. It is true, that by certain ancient Privileges, derived by Charter and Usage from the Crown, divers, especially of the eminent Clergy, had their Mints or Coinages of Money. As the Abbot of St. *Edmunds-Bury*, *Claus.* 32 *H.* 8. *m.* 15. *dorso*: And the Archbishop of *York Claus.* 5 *E.* 3. *pars* 1. *m.* 10. 19. *dorso*, and some others. But although they had the Profit of the Coin, yet they had neither the Denomination, Stamp, nor Allay: For upon every change of the Coin by the King's Proclamation, there issued over a Mandate to the Treasurer and Barons to deliver a Stamp over to those private Mints to be used. But this liberty of Coinage in private Lords hath been long since disused, and in a great measure, if not altogether, reassumed by the Statute of 3 *H.* 7. *Cap.* 6.

2. Concerning the second, *viz.* the Matter or Species whereof the currant Coin of this Kingdom hath been made, it is Gold or Silver, but not altogether pure, but with an Allay of

Copper, at least from the time of King *H.* 1. and *H.* 2. though possibly in ancienter times the Species whereof the Coin was made might be pure Gold or Silver; and this Allay was that which gave the Denomination of Sterling to that Coin, *viz.* Sterling Gold, or Sterling Silver: Wherein there will be inquirable,

1. Whence that Denomination came.
2. How ancient that Denomination was.
3. What was the Allay that gave Silver that Denomination.

For the former of these there are various conjectures, and nothing of certainty.

Spelman supposeth it to take that Denomination from the *Esterlings*, who, as he supposeth, came over and reformed our Coin to that Allay. Of this Opinion was *Cambden*, *A Germanis, quos Angli* Esterlings, *ab Orientali situ, vocarunt, facta est appellatio; quos* Johannes *Rex, ad Argentum in suam puritatem redigendam, primus evocavit: & ejusmodi nummi* Esterlingi, *in antiquis scripturis semper reperiuntur.* Some suppose that it might be taken up from the *Starre Judæorum*, who being the great Brokers for Money, accepted and allowed Money of that Allay, for currant payment of their Stars or Obligations. Others from the impression of a Sterling, or of an Asterisck upon the Coin. *Par ceo que le form d'un Stare, dont le diminutive est Sterling, fuit impresst ou stamp sur ceo.*

Auters pur ceo que le primer de cest Standard fuit coyn en le Castle de Sterlin in Scotland *pur le Roy* Edw. 1. And possibly as the proper name of the fourth part of a Peny was called a Farthing, and ordinarily a Ferling; so in truth the proper name of a Peny in those

times

times was called a Sterling, without any other reason of it than the use of the times and arbitrary imposition, as other names usually grow. For the old Act of 51 *H.* 3. called *Compositio Mensurarum,* tells us that *Denarius Angliæ Sterlingus dicitur.* And because this was the root of the measure, especially of Silver Coin, as will be shewed, therefore all our Coin of the same Allay was also called Sterling, as five Shillings Sterling, five Pounds Sterling.

2. When this name of Sterling came first in is uncertain, only we are certain it was a Denomination in use in the time of *H.* 3. or *Ed.* 1. and after-ages. But it was not in use at the time of the compiling of Doomsday, for if it were we should have found it there, where there is so great occasion of mention of Firmes, Rents and Payments.

Standard del mony en French est appel Pied de mony per Bodin, Pes monetarum, quasi Princeps ibi pedem figit.

Matth. Paris *mag. Hist.* 220. *b. In le* 12 *an. de* Roy John *le primier standard del English mony fuit establish en Realm d'* Ireland, *et fuit equal al primes, & que l' English mony ne fuit au quart part melior in value que l' Irish, come ceo ad estre depuis le temps del* Edw. 4. *Et fuit change in* Ireland *come ceo fuit change in* Engleterre. *Le primer difference & inequality inter les Standards del English monies, & Irish monies est troue in* 5 *Ed.* 4. *car donq; fuit declare in Parliament icy que le Noble serra currant en cest Realm pur* 10 *s. & issint fuit que l' Irish Shilling forsque* 9*d. Dengletre.*

Hovenden *in Rich* 1. *fol.* 377. *b. Videns igitur* Galfridus Eboracensis *electus, quod nisi mediante pecunia*

pecunia amorem Regis sui nullatenus habere possit, promisit ei tria millia Librarum Sterlingorum pro amore ejus habendo. Que fuit devant le temps del Roy John; *pur que semble que le temps quant cest money fuit primerment coin est uncertain. Car ascuns diont que fuit fait per* Osbright *un Roy de* Saxon *race 160 ans devant le* Norman *conquest.* Nummus *a* Numa *que fuit le primer Roy que fesoit moneies en* Rome. *Issint* Sterlings, *alias Esterlings, queux primes fesoient le money de cest Standard en* Engleterre.

3. As touching the Allay that is by use and custom fitted to that Money which we call the Sterling, or Sterling Allay; perchance we shall not find that constancy in the Allay as is generally thought.

The Sterling Allay of Gold, according to the Red Book of the Exchequer is this. The Pound weight of Gold consists of twenty four Charats, every Charat weighing half an Ounce of Silver; and every Charat of Gold consists of four Grains, and consequently every Grain of Gold weighing thirty of these Grains which we call Silver Grains, whereof hereafter.

In the the time of *Edw.* 3. the Pound of Sterling Gold consisted of twenty three Charats, three Grains and a half of pure Gold, and half a Grain of Allay of Copper.

The Sterling Silver, as it seems to me, in former times had an Allay differing from what it is at this day. At this day a Pound weight of Silver (*viz.* 12 Ounces to the Pound, or *Troy* weight) consists of eleven Ounces two Peny-weight of fine Silver, and eighteen Peny-weight of Allay of Copper: Every Pound containing twelve Ounces, and every Ounce divided into 20 parts

parts called twenty Peny-weight: For at that time 20 Peny-weight weighed one Ounce, which though the Peny-weight be altered, yet the Denomination continues. And this Allay was in use in the forty sixth year of King *Edw.* 3. and for some time before, and hath continued ever since

In the Treatise of Money in the Red Book of the Exchequer which seems to be written in the time of *Edw.* 3. for it mentions the Indentures of the Mint in 23 *Ed.* 3. it is said the use was then that in every pound weight of Sterling Silver there was sixteen Peny-weight of Allay: The consequence whereof is, that the Pound of Sterling Silver then contained eleven Ounces four Peny-weight of fine Silver, and sixteen Peny-weight of Copper.

And it should seem by what follows in the Chapter, that in the time of *H.* 2. the Allay of Copper in Sterling Silver was less than that: For upon every Pound weight of Silver Money they used to allow 12 Peny-weight *ad dealbandam firmam*; which seems to be the remedy for the reduction of the Money then currant into fine Silver, *sed de hoc postea.*

But at this day, and for very many reasons, the Allay of Sterling Silver hath been 18 Peny-weight of Copper allowed to 11 Ounces 2 Peny weight of fine Silver; thereby making up the Pound weight Troy of Sterling. *Vid.* Indentures of the Mint, *Claus.* 46 *Ed.* 3. *m.* 18. *Dors. Claus.* 1. *H.* 5. *m.* 35. *Dors. Claus.* 4. *Ed.* 4. *m.* 20. And this I take at this day to continue the Standard of Sterling Silver.

23 E. 1. *Per special ordinance del Roy les Pollards & Crockards fueront decrie, & adnul, quel ordinance fuit transmit in Realm d'* Ireland *& enrol*

rol en Exchequer icy, come est troue in Libro rubro Scaccarii, ibid. pars 2. fol. 2. b.

En temps E. 1. Denarius Angliæ, qui nominatur, Sterlingus, rotundus sine tonsura, ponderabit triginta & duo grana in medio spicæ.

Dy. 6. & 7 Ed. 6. *Sterlingus & Denarius sont tout un. Le Shilling consistoit de* 12 *Sterlings.* 25 E. 3. cap. 6. *Le substance de cest denier ou Sterling Peny al primes fuit vicesima pars unciæ. Et issint continue tanq.* 9 E. 3. *quant l' ounce del Silver fuit tallie in* 26 *pence que proportion fuit continue tanq.* 2. H. 6. *quant l' ounce del Silver fesoit* 32 *pence. Et cest iusq; al* 5 E. 4. *quant fesoit* 40 *pence. Et cest iusques* 36 *H.* 8. *quant il prepare son journy al* Bulloigne *& donq; fuit divide en* 45 *pence. Que continue iusques al* 2 El. *quant l' ounce de pure Silver fuit tallie en* 60 *pence, & cest Standard remain a cest jour.*

Rastal Money. 345.

Davis 24

Et qualibet libra de sterling avoit 18*d. ob. d' allay de Copper, & nient plus. Et cest allay de sterling Mony les Ordinances ou Statutes de* 25 E. 3. *cap.* 13. *&* 2 H. 6. *cap.* 13. *font mention, & est contein en touts Indentures fait enter le Roy & les Maisters del Mint.*

CHAP. II.

Concerning the Weight of Coin, and the Difference therein, with regard to the Denomination of Coin.

THE Pound weight of Gold, though it were the same with that of Silver, yet is made up of smaller parts of a different Denomina-

mination, every pound weight consisting of 24 Charats, and every Charat consisting of 4 Grains

The Pound weight of Silver is subdivided into parts of another Denomination; for every Pound consists of 20 Peny-weights, and every Peny-weight of 24 Grains. This appears by the Books and Records above mentioned. *Et touts susdits moneys dargent issint faites serront dallay de Standard de veil Esterling: Cest ascavoir que chescun leivre dargent de cestes moneys de poize tiendra vnze ounces & 2d. de poize dargent fine, & 18d. de poys dallay, chescun peny weight containant 24 grains.*

So that every Charat in the Pound weight of Gold equals half an Ounce of Silver; and every Grain of Gold, the fourth part of a Charat, equals 60 Grains of Silver weight.

In that old Ordinance, beforementioned, called *Compositio Mensurarum* 51 *H.* 3. it is said, *Per ordinationes totius Regni* Angliæ *sit una mensura Domini Regis composita, viz. quod Denarius* Angliæ, *qui nominatur Sterlingus, rotundus sine tonsura ponderabit triginta & duo Grana frumenti in medio spicæ; & viginti Denarii faciunt Unciam; & duodecim Unciæ faciunt Libram,* &c.

But these thirty two Grains in the middle of the Ear of Corn, are the natural Grains, which were the weight of the then Engish Sterling Peny. But for the better accommodation of Accompts, these 32 natural Grains are reduced to 24 artificial Grains, which, from very ancient time unto this day are the common measure of the Peny-weight, as the 20 Peny-weight is the measure of an Ounce.

Having thus stated the artificial weights of Gold, and Silver, especially the latter, I shall proceed

proceed to the comparison that now and anciently stands between these artificial weights and the Coin of Silver.

It is very plain that in the latter end of *H.* 3. and the beginning of King *Ed.* 1. and for a long time before, twenty Pence of Sterling Money did weigh an Ounce, and twelve times twenty Pence or twenty Shillings did then weigh a Pound Troy weight: And accordingly as twenty Peny-weight was then an Ounce, and so called, so two hundred and forty Pence, or twenty Shillings was a Pound weight, and so called, *viz. Libra Argenti.* And although at this day the Peny and the 20 Shillings of Silver is much altered in their true weight, yet the Denomination is still retained. The Ounce is commonly divided and estimated by 20 Peny-weight, and 20 Shillings is called *Libra Argenti.*

In the time of King *Edw.* 1. (as appears) an Ounce of Sterling Silver made 20 Sterling Pence, and consequently a Pound of Sterling Silver made 240 Pence Sterling. But process of time hath made a great alteration between the Weight and extrinsick Denomination or Value of Money.

In 46 *E.* 3. it appears by the Indenture of the Mint that a Pound of Sterling Silver made then 300 Sterling Pence. *Claus.* 46. *E.* 3. *m.* 18.

And afterwards in 1 *H.* 5, the reduction of Coin was such, that a Pound weight of Sterling Silver made 360 Pence Sterling. *Claus.* 1 *H.* 5. *m.* 25. *dorso.* Which made the Pound weight of Silver to contain 30 Shillings, and deducting 1 Shilling for Coinage, the Merchant had

29 Shillings for his Pound of Silver brought into the Mint.

In the 4th year of *Ed.* 4. the Pound of Sterling Silver yielded 33 Shillings, *viz.* about 396 Pence in the Pound: And consequently 33 Sterling Pence then made the Ounce of Silver. *Claus.* 4. *E.* 4. *m.* 20.

At this day the Ounce of Silver Coined contains 5 Shillings, or 60 Pence: And consequently the Pound weight of Coined Silver yeilds 60 Sterlings, or 720 pence. So that at this day the extrinsical Denomination or Value of Money in proportion to its Weight, is three times higher than it was in the time of *E.* 1. And thus much shall suffice touching the second Enquiry.

CHAP. III.

Touching the Corruptions of Money, and the Remedies anciently used in relation thereunto.

BY what hath been before said it appeareth, the two special Requisites of the currant Coin of this Kingdom are,

I. That it be of the true Standard in relation to its weight.

II. Of the true Standard with relation to its Allay: And proportionably to these two Requisities are these Defects, which have happened in Moneys in modern and ancient times, *viz.*

I. The

1. The defect in the due weight of Money which happened sometimes by counterfeiting the Sterling Money, though with a weight below the Standard. Sometimes by clipping, or otherwise imparing the weight of true Money.

2. The defect in the due Allay: *viz.* overcharging the fine Silver or Gold with an Allay of Copper more than the Standard, which happened sometimes by the deceit or ignorance of the Officers of the Mint, and sometimes by the counterfeiture of the Coin of *England.*

And by these practices the King's Exchequer (into or through which the most of the Money of the Kingdom successively came) was many times surcharged with such defective Money, and the King thereby deceived in his Firmes.

And therefore in ancient times there were successive Experiments made by the Officers of the King's Revenue for the discovery and avoiding of these defective Monies, and that his Rents might be answered in Money of a just weight and Allay; which, for the better understanding of ancient Records, remain here to be explicated, *viz. Solutio ad Scalam, Solutio ad Pensum*, and Combustion, or tryal by fire. The two former being such Remedies as related to defective Weight, and the latter being the Remedy that relates to defect in the Standard of Allay. And, touching this business, although we have very frequent mention of them, in the Pipe-rolls especially, yet the best, and contemporary exposition of them is *Gervasius Tilburiensis*, or the Black Book of the Exchequer, written in the time of *H.* 2. who gives us the Accompt thereof in his first Book, *Cap. A quibus, & ad quid inventa*

fuit

fuit Argenti examinatio, who thus expounds it.

1. *Solutio ad Scalam*, viz. *præter quamlibet Libram numeratam sex Denarios*, which it seems was agreed upon a *medium* to be the common Estimate or Remedy for the defective Weight of Money, thereby to avoid the trouble of weighing the Money which was brought into the Exchequer. And this is the meaning of that frequent expression in the ancient Pipe-rolls *In Thesauro* 100*l.* *ad* *Scalam*, which seems to be one hundred Pounds, and one hundred Sixpences, or fifty Shillings.

2. *Solutio ad Pensum:* Which was the payment of Money into the Exchequer by full weight, *viz.* that a Pound, or 20*s.* in Silver, *numero*, or by tale, should not be received for a Pound unless it did exactly weigh a Pound weight Troy, or twelve Ounces, and if it wanted any, that then the Payer should make good the weight by adding other Money, although it amounted to more or less than 6*d.* in the Pound, (which was the *Solutio ad Scalam*, as before is mentioned.) And thus frequently occurs in the Pipe-rolls, *In Thesauro* 100*l.* *and pensum*, or full weight.

3. Combustion or tryal by fire: which is by *Gervase* supposed to be set on foot by the Bishop of *Salisbury*, then Treasurer, (though in truth it were much more ancient, as appears by frequent passages in the Book of Doomsday:) and the Author gives the reason: *Licet enim numero & pondere videretur esse satisfactum, non tamen materia. Consequens enim non erat ut si pro Libra una numerata 20 Solidos, etiam Libra ponderis respondentis consequenter Libram solvisset:*

Argentum enim Cupro vel quovis Ære solvisset. And thereupon ensued the constitution of examination of Money at the Exchequer by Combustion. Whether this examination was to reduce an equation of Money only to Sterling, *viz.* a due proportion of Allay with Copper; or to reduce it to fine and pure Silver, and to make the estimate of the Pound or *Libra Argenti*, reserved of their Firmes to be in pure Silver, and without Allay, doth not so clearly appear. Some think the former; and therefore that the old expression of *Firma alba*, blank Firm, and *dealbare Firmam*, was nothing else but Coin melted down and reduced to the Allay of Sterling, and after blanched, or whited, as is done by the Monyers with their Sterling Coin of Silver, which is to this day called blanching. *Vid.* Spelman *intit. Firman dealbare.* But yet it may seem, by what ensues, that it was to reduce it to fine Silver, and to the estimate of the Pound, or *Libra Argenti* accordingly; for it is evident by what follows, that the difference between a Pound, or *Libra Argenti numero*, and *Libra Argenti blanch*, was 12 Pence in every Pound: Which possibly might be that the allowed Allay of Copper in the Sterling Silver was then twelve Pence weight of Copper in the Pound of fine Silver, whereas it is now 18 Peny-weight in the Pound. This tryal of Silver by Combustion, in those elder ages soon prevailed and obtained against the former reductions *ad Scalam, & ad Pensum*, as being the only infallible tryal of the truth of the Metal, whereby the former reductions of *Pensum* and *Scalam* became in time antiquated.

And

And this begat the distinction in the old Rolls of the estimate of Money *Numero*, and the estimate *Blanc:* and in pursuance thereto the reservations of Rents and Firmes by the King were sometimes *Numero*, and sometimes *Blanc*.

The reservations of Rents *numero* were no other but so much Money reserved *in Pecuniis numeratis:* as *reddendo quinque Libras numero* was fivescore Shillings, which amounted in common estimation to five Pounds Troy weight: And this was the ancient and usual reservation, and, *prima facie*, unless the contrary were expressed, upon all Grants of Lands (reserving so much Rent) it was intended *numero*; that is, so much in Money numbred, and the Firmor was not bound *dealbare Firmam*, or to make good so much in fine Silver, or, if you will, in such Silver as was of the first Allay.

The reservation of so much Money, or so many Pounds *blanc* did enforce the Firmor to make good to the King so much in fine Silver, (or at least in the purest Sterling) and therefore such Firmor, when he paid in his Firme upon such a reservation *blanc*, was bound *dealbare Firmam*, which was to submit his Money to the test of the Fire; and to answer his Money, and make it good in fine Silver according to the reservation, or to pay in allowance thereof that rate which was the ordinary measure of reduction of it to fine Silver, which was 12 *d.* for every Pound as shall be shewed.

And hereupon grew the common difference which is everywhere mentioned in the Pipe-rolls of Firmes *numero*, and Firmes *blanc* or *alb*, Firme.

This difference of these Firmes is expounded

ed by the Black Book of the Exchequer, *Lib.* 2. *Cap. Quid sit quosdam fundos dari* blanc, *quosdam numero, viz.* that if a Firme or Tenement were let by the King generally, without expressing *blanc* or *numero*, it was to be answered only *cumero*, unless specially reserved *blanc*, (*viz.* 5*s. blanc.*) But if a Royalty or Franchise were only granted, then the general reservation of so much Rent, was to be *blanc* Rent. *Porro, Firmam numero dari diximus cum tantum numerando, non examinando ipso satisfit. Cum ergo Rex Firmam alicui contulerit, simul cum Hundredo vel placito quæ ex hoc proveniunt, Firma dealbari dicitur: sin simpliciter fundum dederit (non determinants cum Hundredo vel* blanc,) *numero datus dicitur.* And from this diversity of the Rents arising in any County (some *blanc* only, some *numero* only, some in both) arose the diversity in the titling of the Sheriffs Accompts, *viz.*

Firma de remanente Comitatus post terras datas blanc: Which was applicable to those Rents of his County, which were answered in fine Silver reduced to the test by combustion, or with an allowance of 12*d.* in the Pound in compensation of it.

Firma Comitatus numero, was his Firme for those Rents of his County which were only answered in Money numbred, without reducing them to their fineness by Combustion, or any satisfaction for it: But of this more fully in the ensuing Chapter.

I have before mentioned that when any Firme was reserved or answered *blanc*, the Money was to be melted and answered in fine Silver, or at least to Silver allayed to right and fineft

fineſt Sterling, or elſe he was to redeem himſelf from that trouble by payment of 12*d.* in the Pound: So that that Perſon upon whom there was reſerved 5*l. blanc.* was to pay 5*l.* 5*s.* if he would not have his Money melted down and made good in fine Silver (or at leaſt in true Sterling.) And this appears to be true by infinite Records: Take two or three for inſtance.

In compoto cum Northampton, 21 H. 3. *Summa totalis* 102l. 3s. 7d. *de qua* 4l. 9s. 4d. blanc. *quæ ſunt extenſæ ad* 4l. 13s. 9d. *ſubtrahuntur ad perficiendum corpus Comitatus & remanet* 97l. 13s. 10d. *de quibus reſpondet de proficuo in magno Rotulo.*

Clauſ. 13. H. 3. *m.* 2. *Sciatis quod perdonavimus dilectæ Sorori noſtræ* A. *Comitiſſæ* Pembroc *centum triginta & quinque Libras* blanc. *quæ extenſæ ſunt ad centum quadraginta & unum Libras, & quindecim Solidos.*

In Compoto Bedf. & Bucks, 13 *E.* 3 Nic. Paſſelew *de* 18*l.* 4*s.* 4*d. numero pro* 17*l.* 7*s. blanc.*

In all theſe the proportion riſeth very near, bating the ſmall fragments in Pence, that every Pound *blanc* anſwered one Shilling over, to reduce it to its value.

And hence it is that at this day the ancient Firmors of Cities, as *London, &c.* which were commonly reſerved *blanc*, do pay the ſame in Sterling Money, and one Shilling for every pound over: As if 100*l. blanc* be reſerved, there is anſwered at this day in the Receipt 105*l.* which as before, makes me ſuppoſe that *blanc* Firme, or *dealbata Firma*, was in truth when it was reduced to fine Silver, and not

barely Sterling: for this advance of 12*d.* in the Pound upon such *blanc* Firmes is still answered though paid in Sterling.

CHAP. IV.

Concerning the manner of answering the King's Firmes antiently.

IN ancient times, *viz.* about the time of *William* the first and *Henry* the second, the reservation of the King's Firmes and Rents were so many Pounds or Shillings, *&c.* in Money, and they were answered *numero*, or *in Pecuniis numeratis*, until afterward, for the avoiding of corrupt Money, they were reserved in *blanc* or white Money, which, as before is observed, was intended either of pure Silver, (or at least Silver reduced to the Allay of Sterling) and then whitened or blanched, as is used in the Mint to this day, for all Sterling Money: I shall not much contend whether it were the one or the other, but for the most part in this Discourse I shall suppose it fine Silver.

But although Firmes were reserved in Money, as the best and commonest measures of values, yet it appears by *Tilburiensis, Lib.* 1. *Cap. A quibus & ad quid instituta fuit Argenti examinatio*; that it was in those ancient times of King *W.* 2. and *H.* 1. usually practised that those Firmes should, according to their values be answered in Cattle, Corn and other provisions; which perchance in its first institution might

might be a convenience to the King, to have his Family furnished with Provisions *in specie*, and to the Country, among whom Money was not then very plentiful, and they could better answer their Rents in Provisions.

And to the end that an equation might be made between the Rents reserved in Money and the Provision delivered by the Tenants in lieu thereof, the same *Tilburiensis* tells us, there were certain prices and rates set upon provisions, that the Tenant might know what to pay, and the King's Officers might know what to receive. As for Wheat for 100 Men 12*d.* for a fat Ox 12*d.* &c. which it seems were delivered to the hands of tho Sheriff, who, if he firmed the County, might retain it to his own use; but if he firmed it not, he accompted to the King, for these Provisions or their values, as he did for other rates of the County collected by him.

But as for Cities and Franchises that were granted out to firme, because they had not Provisions of this nature to answer, they paid their Rents in Money.

Thus, it seems, the King's Firmes of Rents of his Firmors and Tenants in the Country, were answered in the time of King *William* the first and *William* his Son. But in the time of *H.* 1. the Tenants were weary of answering their Rents in provisions, and the King's foreign occasions called rather for a supply of Money, and so the Rents were answered by the Tenants as formerly in Money according to the tenour of their reservations, and the delivery of Victual and other Provisions in lieu thereof ceased.

CHAP. V.

Concerning the manner of collecting the King's Revenues of the County, and the several Kinds of them, with their several Titles.

THE Sheriff of the County had a double Office: 1. As a Minister of Justice under the King for the Preservation of Peace, and Writs issuing out from the King's Courts. 2. As the King's Bayliff of his Revenues arising in the County, which was of two kinds.

1. The improving and letting, and sometimes stocking of the King's Demesnes, and such Lands as were seized into the King's hands (other than such as belonged to the Escheator, as Wardships and Escheats.) And hence it is that there are upon the accompts, especially of *Buckingham* and *Bedford*, allowances made to the Sheriff of that County *ut .... Comitatus.*

2. The second part of his Office was in collecting of the King's Rents of his County, which sometimes he did as *Custos* or Bayly; sometimes *ut Firmarius, viz.* he took the Rents to his own use, and answered the King a certain Firme or Rent at his own peril, whereof more in the ensuing Discourse. Now concerning

ing the kinds of the King's Revenues arising in the several Counties, we are to take notice that they were of two kinds, *viz.* Annual or Casual.

The Annual Revenue was again of two kinds, *viz.* Fixed and Certain, or Casual and Uncertain.

The Annual, Fixed and Certain Revenue of the Counties were of these kinds.

1. The King's Demesnes that were in his own hands, or let at Rack-rents to Tenants, whereof I have before spoken, and they make not much for that purpose I aim at.

2. Firmes, which were of two kinds, *viz.* Gross Firmes which were charged upon particular Persons, or Cities, or Towns, and so charged in the great Roll; as thus, *Philippus d'Aura debet* 2 *Marc. de reditu unius virgate terre.* And these were thus charged upon these two reasons: 1. Either because they were never parcel of the Sheriffs Firme of this County, (*de quo infra,*) but great Firmes written out to the Sheriff to be answered by the persons upon whom they were charged. 2. Or else they were such as happened to be reserved after the Firme of the County was reduced to certainty and answered by the Sheriffs. Or else, Secondly, they were small Rents commonly called Vicontiel Rents; the Particulars whereof we shall enumerate under their several heads in due time.

3. Common Fines, at first imposed upon Townships, upon several occasions, as for *Bon pleder*, for Suit and Ward, for excuse of attending the Sheriffs turn: And these grew in process of time to be fixed and settled Revenues.

And

And theſe again were of two Sorts; ſuch as came within the Title of *Firma Comitatus*, and were written out under that general Head, *viz. ſub nomine Vicecomitis:* And ſome again were written to the Sheriff in the particular charge of ſuch and ſuch Townſhips and Lands, and ſo charged upon the Towns by the expreſs words of the Proceſs.

4. Arrentations of Aſſarts and Purpreſtures in Waſts and Foreſts ſet by Juſtices in *Eyre*, which for the moſt part were written out in charge againſt the particular Lands upon which they were charged: And ſome perchance were demanded in a groſs Summ, among other ſmall Rents *ſub nomine Vicecomitis*.

5. *Crementum Comitatus*, or *Firma de cremento Comitatus*; which were ſome improvements of the King's Rents above the ancient Vicontiel Rents, for which the Sheriff anſwered under the title of *Firma Comitatus*. And this *Crementum Comitatus*, or the ſeveral ſmall advances of the old Vicontiel Rents, were anſwered under the title of *Crementum Comitatus*, or *Firma de cremento Comitatus*. But thoſe kinds of Firmes *de cremento* are only found in the Counties of *Bedford*, *Bucks*, *Norfolk*, *Suffolk*, *Warwick*, *Leiceſter*, *Wigorn* and *Glouceſter:* Certain other Summs annually charged in groſs upon the Sheriff for certain other ſmall or minute Rents under ſeveral titles in ſeveral Counties; as, *De Cornagio*, *de Wardis*, *Caſtle de Firma*, *Purpreſt & Eſcaet de diverſis Firmis*, *de minutis particulis*, *Serjancia de tr~is aſſert infra divers foreſt:* All which were charged in groſs Summs upon the Sheriff, and *ſub nomine Vic.* without expreſſing

expressing any particulars, or upon whom they were charged, which because they were not common to all Countries, but varied according to the various usage of several Counties, I shall not at large handle, but shall content my self with the enquiry into those that were the common Charges of the Sheriffs of every several County, *viz.* the *Corpus Comitatus*, and the *Proficua Comitatus*.

The Vicontiel Rents that made up the Sheriffs Firme of the Body of the County, came under various Titles and Denominations in several Counties, *viz.*

1. *Reditus Assize in* Cumberland, Hertford, Surry.
2. *Firme & feodi Firme in* Cumberland, Northumberland, Nottingham, Stafford.
3. *Firma antiqua in* Huntington.
4. *Albe Firme in* Norf. & Suff.
5. *Blanch Firmes in* Ebor', & Suff.
6. *Blanc Rents in* Kent.
7. *Albus Cervus in* Dorset.
8. *Auxilium Vicecom' in* Cant', Cumbr', Essex, Hunt', Leic', North', Sussex, Warw', Wilts.
9. *Auxilium ad Turcum Vicecom' in* Devon.
10. *Hidage in* Berks, Bedf. Bucks, Oxon.
11. *Prestatio pro pulchre placitando in* Bedf', Bucks.
12. *Secta & Warda in* Bedf', Bucks.
13. *Visus Franci plegii in* Bedf', Bucks, Cant', Hunt', Essex, Hertford, North'ton, Somerset, South'ton, Stafford.
14. *Certitudines in* Berks, Heref', Rutland.
15. *Certi reditus in* Lincoln, Leicester, Somerset, South'ton, Warwick & Wilts.

16. *Certi*

16. *Certi reditus ad communem finem in* Derby, Nottingham.
17. *Reditus pro Warda castri in* Cant', Northum', Oxon, Norf', & Suff'.
18. *Reditus ad Turnum Hundredi in* Dorset.
19. *Finis antiquus in* Essex.
20. *Finis pro secta Curie relaxand' in* Berks & Oxon.
21. *Communes fines in* Glouc', Heref', Hertf', Surry, Suffolc, Salop.
22. *Fines Aldermannorum in* Sussex.
23. *Turnum Vicecom' in* Essex. & Hertf'.
24. *Secta Burg. & Vill. in* Cant'.
25. *Suit Silver in* Staff.
26. *Hundred Silver in* Norf'.
27. *Faith Silver in* Staff'.
28. *Pannel Silver in* Norf'.
29. *Ward Silver in* Essex.
30. *Certum lete cum Capitag' in* Norf'.
31. *Leet fee in* Suff'.
32. *Soken fees in* Suff'.
33. *Mott fee in* Salop.

These are the general Titles of those Vicontiel Rents that usually came under the Title of *Firma Comitatus*, which were written generally *sub nomine Vicecom'*, without expressions of the particulars: But the Sheriff that had a particular Roll of these Vicontiel Rents, delivered in that Roll many times upon his Accompts, though not written especially in charge under those names, or in particular by the Summons of the Pipe: And thus much concerning the certain Annual Revenue.

2. The uncertain Annual Revenue was the *Proficuum Comitatus*, which in ancient times when

when moſt of the Law-ſuits were tranſacted in the Counties and Hundred-Court, was a conſiderable Revenue. But ſince that time, *viz.* about the beginning of *E.* 1. when much of that buſineſs was tranſacted at the great Courts, this profit of the County ſunk to very little. And in my enquiry touching this part of the Revenue, I ſhall firſt ſet down what it was not: Secondly, I ſhall ſet down what it was, and how it did ariſe.

1. Touching the former of theſe what it was not; I ſay, moſt clearly it was not that profit which is now the only conſiderable profit of the Sheriffs employments, *viz.* the Fees and Perquiſites for the execution of Writs, and Proceſs and Execution iſſuing out of the King's Courts. For,

1. Until the Stat. of 23 *H.* 6. *c.* 10. there were no Fees at all by Law due for any execution of Proceſs or Warrants for the ſame. Till the Stat. of 29 *El.* 2. there were no Fees allowed by Law for levying of Debts or Damages: But by the expreſs proviſion of the Stat. of *Weſtminſter* the firſt, the Sheriff was bound to execute the King's Proceſs without any Fee, which is no other but a declaration of the Common Law.

2. In no Viſcontil Schedule or Accompt of the County that ever I could ſee or hear of, is there any Accompt for Fees for execution of Proceſs, or any mention thereof.

3. If the Sheriff did in thoſe elder times take any Fees for execution of Writs, there was no colour of reaſon that he ſhould accompt for that: And if he did take more than a reaſonable recompence for his pains, it was more

more than could be justified, and not at all due to the King.

II. But now, as to the Second enquiry, what this *Proficuum Comitatus* was: And it seems very plain that it was made up principally by these particulars, as most evidently appears by divers accompts of Sheriffs in ancient times, when they accompted *ut Custodes* or *Ballivi*, not *ut Firmarii, viz.*

1. The Fines, Issues and Amercements, and other Profits of the County-Courts, which in those ancient times were very considerable, for it held Plea in all Writs that were Vicontiel, directed immediately to the Sheriff out of the Chancery, *viz.* by Justices; and many times not only personal Suits were removed thither out of inferiour Court-Barons and Hundred-Courts, but also Pleas Real, *viz.* Writs of Right; and in ancient time many real Actions, especially Writs of Right were determined in the County. And therefore it is frequent in the old Schedules of *Proficua Comitatus*, especially in *Yorkshire* in the times of *R.* 1. and King *John*, such as these, *viz. De* J. S. *pro licentia concordandi demimark. De* J. S. *pro Warrantia Essonii* 2*s.* and sometimes a Mark *pro mi'a Comitatus*, sometimes 10*s. quia retraxit se, Demimark. De pretio bonorum per distringas demimark. Pro transgressione* 2*s. Pro falso clamore demimark*, &c.

So that it appears in the accompt of 20 *Johannis Regis*, the profits of the bare County-Court of *York* for one half year amounted to 31 *li.* which is more than 100*l.* in a just estimate at this day.

2. The

2. The Profits of the Sheriffs Turns, or the Sheriffs Leets, which had Conusance of matter Criminal, as his County Court was for matters Civil: and the Profit consisted,

1. In Amercements of Sutors that made default.

2. In the Fines and Amercements of such as were convict of offences inquirable in the turn; as Nusances, Bloodshed, Assize of Bread and Beer, *&c.* and these arose usually to a considerable Sum yearly.

3. The Profits of the Hundred-Courts and Wappentake Courts; the Profits whereof consisted in the Fines, Amercements and other Perquisites of the Hundred-Court, which the Sheriff sometimes took in kind; sometimes he let it to Firme. These Baylywicks of these Hundreds, and with them the Profits and Perquisites of Courts were sometimes let to Firme by the King, and in such cases the Sheriff accompted *Proficua Ballivatus*, which oftentimes arose to very considerable Sums. In the time of *H.* 3. the Firmes of the Baylywicks of the Hundreds in *Yorkshire*, beside *Stancliff* and *Strafford*, were let for 100*l.* 6*s.* 8*d. per annum*, which was then a considerable Sum, and amounts now in Sterling Money to thrice as much. But as the business and jurisdiction of the Hundred-Courts sunk gradually in their employment, (whereby the Perquisites now do but little surmount the charge of keeping them) so now by the Stat. of 23 *H.* 6. *cap.* 10. the Sheriff is restrained from letting the Baylywick to Firme; and most of the Hundreds, at least in many Counties, are disjoined from the County and granted out, some in Fee-farm, and some otherwise, though

though there have been frequent attempts of rejoining them to the Sheriffs by acts of Reſumption.

And theſe are the Profits that made up the *Proficuum Comitatus*, for which the Sheriff moſt commonly in ancient time anſwered as *Firmarius* at a certain Rent, though ſometimes he accompted for it as *Cuſtos* or *Ballivus* as ſhall be ſhewn. And I know no other Perquiſite that made up the *Proficuum Comitatus* but what is above mentioned; only in *Northumberland* there were ſome Caſtle-gard-Rents that were in truth Vicontiel Rents, and in their propriety and nature belonged to the *Corpus Comitatus*, which yet by conſtant uſage were uſually anſwered among the *Proficua Comitatus*. And thus far concerning the annual Revenue of the County, both Certain and Uncertain, chargeable upon the Sheriffs collection.

2. The Revenue Caſual conſiſted of many Particles under various Heads or Titles, *viz.* Debts drawn into the Pipe, and thence written out unto the Sheriff. Fines voluntary or compulſary. Seiſures of Lands and Compoſitions, *&c.* they may be reduced under theſe three Heads at this day.

1. The Debts written out to the Sheriff from the ſeveral Offices, *viz.* the two Remembrancers, Clerk of the Pipe, *&c.*

2. The Summons of the Green Wax, written to the Sheriff with the Eſtreats from the Treaſurer's Remembrancers.

3. The foreign Accompts, or Seiſures of Lands for Debts or Forfeitures.

As touching eſcheated Lands and Wardſhips, they came under the Eſcheator's charge, and the

the Profits thereof rarely anſwered by the Sheriff, unleſs for ſome few ancient Eſcheats.

CHAP. VI.

Concerning the manner how the Annual Revenue of the County was uſually anſwered in the ancient times until 10 E. 1.

HAving ſhewed what the Annual Profits of the County conſiſted of, I ſhall now deſcend to the manner how it was anciently anſwered. The Sheriff, as hath been ſhewn, was the King's Bayly for the collecting of the King's Revenue: And touching the manner of his collecting and anſwering them, and therein principally concerning thoſe two great parts of the Annual Revenue, *viz.* the *Corpus Comitatus*, or when it was in Firme, the *Firma corporis Comitatus:* And the *Proficuum Comitatus*, and when it was in Firme, the *Firma de proficuo Comitatus*; both which ſhall be hereafter more fully explained.

Theſe Profits were anciently, and are to this day anſwered at two Terms in the year, *viz.* Michaelmas and Eaſter.

But to enable the more effectual levying of them, there always iſſued to the Sheriff before Eaſter and Michaelmas, out of the Exchequer a Writ called the Summons of the Pipe, which

had annexed to it the Charge or Sums for which the Sheriff was anſwerable, *viz.* thoſe which were charged upon himſelf *ſub nomine Vicecomitis*, and thoſe which are charged upon others. The Form of the Writ is recorded in the black Book of the Exchequer, *Lib.* 2. *cap. Qualiter fient Summonitiones*; which continue to this day, *viz. Rex Vic'* Ebor' *Salutem. Vide ſicut teipſum & omnia tua diligas quod ſis ad Scaccarium noſtrum* Weſtm' *in Cro' Sancti* Michaelis, *vel in Cro' Clauſi* Paſchæ, *& habeas ibi quicquid debes de vetere firma vel nova: Et nominatim hæc debita ſubſcripta.* And then the whole charge is inſerted, which commonly began with theſe annual Revenues, *viz.*

De Corpore Comitatus	
(or if it were in Firme)	
De Firma de Corpore Com.	100 bl.
De Numero Comitatus	10
De Proficuo Comitatus	
(or if in Firme)	
De Firma de proficuo Com.	50

And then the Sum in groſs charged upon the Sheriff for divers ſmall Rents, and then afterwards all thoſe Firmes that were charged upon particular perſons *ſeriatim* and in order.

And according to the order wherein they were written out to the Sheriff, accordigly in effect were the Accompts paſſed, and the Entries made thereof in the great Roll of the Pipe, only the particulars in the Writ was their charge of the Sheriff, unto which he was to give his anſwer upon his Accompt, and then there are entred his diſcharges.

And

And this Firme continues there to this day, with ſuch alterations as are hereafter mentioned: And therefore the Ordinance or Statute *in Libro Rubro Scaccarii, fol.* 242. made in 54 *H.* 3. is nothing elſe but the ſtable and fixed method for writing the great Roll, obſerved both before and ſince that day.

Primo, Scribatur Corpus Comitatus, deinde Eleemoſyne conſtitute, & Liberationes & Bri'a priſci Vicecom' ſicut ſemper fuit conſuetum. Deinde oneretur Vic' de Firmis pro proficuo Comitatus vel de proficuis: Deinde ſcribantur omnes Firme tam majores quam minores, &c.

And altho the certain *Debet* of the Sheriff could not be known before the finiſhing of his Accompt, becauſe it could not be known what he levied, and what not; and what he had paid, and what not; (which Accompts was not until the end of his year) yet it ſeems there was anciently an eſtimate what this conſtant charge of the annual Revenue amounted unto, and what the conſtant allowances amounted unto, according to a *medium*, or poſſibly according to thoſe Firmes and groſs Sums which were charged immediately upon the Sheriff *ſub nomine Vicecomitis*; and theſe Sums were paid into the Exchequer at the return of the Writ of Summons of the Pipe, and they were, and are to this day called *Profre Vicecom'*, or the Sheriffs Proffers. And by the Statute of 51 *H.* 3. called *Statutum de Scaccario*, thoſe proffers are appointed to be paid on the morrow of St. *Michael*, and the morrow *poſt Clauſum Paſchæ*; and the payment of theſe proffers are continued to this day: But altho they are paid, yet if upon the concluſion of the Sheriffs Accompt, and af-

ter the allowances and diſcharges had by him, it appears that he be in ſurpluſage, or that he is charged with more than indeed he could receive, he hath ſometimes, and for the moſt part, all his proffers paid or allowed to him again: and ſo indeed it is but a mock-payment, a payment kept on foot to maintain the old method of his Accompt, but is in effect but ſo much Money lent, for he hath it (and juſtly enough) allowed to him back again: The reaſon and juſtice whereof ſhall be ſhewn hereafter. And now to return again from whence we digreſſed, I ſhall now ſearch out the meaning of theſe Firmes, *Corpus Comitatus bl.* and *Numerus Comitatus*, and *Firma de Corpore Comitatus*, and *Proficua Comitatus*, and *Firma de proficuo Comitatus*, I mean as they relate to the Sheriffs Accompt, for what the things were is ſufficiently diſcovered before.

Therefore as to the *Corpus Comitatus*, I have already ſhewn in the precedent Chapter, what it conſiſted of, *viz.* the Vicontiel Rents of the County; and they conſiſted of two ſorts of payment, *viz.* thoſe that were anſwered in *blanch* Money, and thoſe that were anſwered in Money numbred. And this ordinarily made two titles of the *Corpus Comitatus* in moſt Counties, *viz.* where there were Firmes of theſe differing natures, and they are then thus noted, *viz.*

De Corpore Comitatus	100*l.* bl.
De Numero Comitatus	50

And they were written out thus generally, without

without expreſſing the ſeveral Vicontiel Rents, but only the groſs Sums what they amounted to *blanc*, and what they amounted to *numero*, or *de numero Comitatus*. And the Sheriff upon his Accompt was uſed to bring in a Vicontiel Roll, containing theſe particular Vicontiel Rents, what they were and what he had levied.

By this it appears that in the firſt conſtitution of this Vicontiel Accompt the Sheriff accompted for theſe Rents as Bayly or *Cuſtos*, and anſwered what he levied though they were written out, and ſtood upon the great Roll all in a lump, and when the Sheriff accompted thus, he accompted as *Cuſtos* or Bayly. But in proceſs of time (but that time being ancient) the Sheriff for the time being took the *Corpus Comitatus* or Vicontiel Rents to Firme, which Firme, for the moſt part amounted to very near the entire quantity of the Vicontiel Rents. And this Firme in many Counties was very ancient, for we find them mentioned in the Pipe-rolls of the time of King *John* and *R.* 1.

And by this means the Sheriff was to anſwer at his peril his Firme, for it became his own debt, and he was to gather up the Vicontiel Rents to his own uſe to make himſelf a Saver.

She Sheriffs Commiſſion hereupon was with the reſervation of the Firme, and although we have not memorials of all thoſe reſervations, yet of ſome we have.

Inter Communia of 19 *E.* 1. Bedf. Bucks, *Rex* 16. *Jan. Anno.* 19. *Commiſſit* Will. Turvil *Com'* Bedf. & Bucks *cum pertinent' cuſtodi-*

end' quamdiu Regi placuerit reddendo inde per annum quantum Johannes Palam *nuper Vicecomes eorundem reddere conſuevit.*

And by little and little this grew into a uſage, the ſucceeding Sheriff anſwering the Firme of the County, and of the Profits of the County as his predeceſſor had done: Whereby the *Firma Comitatus* and the *Firma de proficuis Comitatus* became as ſettled Firmes charged upon the Sheriff though there were no expreſs reſervation of it upon his Patent or Commiſſion of Sheriff.

And becauſe theſe Firmes were in their firſt reſervation proportioned to the value and nature of thoſe Rents, which now the Sheriff had, as before the King had them, *in ſpecie*; hence the Sheriffs Firme of the County or Body of the County as it was proportionable to the ſame, anſwered for the Vicontiel Rents; ſo it was proportioned to their nature, *viz.* becauſe ſome of the Vicontiel Rents were in *blanc* Money, the Sheriffs Firme correſponding to that was anſwered in *blanc* Money: And ſome of thoſe rents being anſwered *numero*, the Sheriffs Firme correſponding thereto was anſwered *numero.*

And by this Accompt the charge both upon the Summons of the Pipe and upon the great Roll, was altered, *viz.* whereas the former Style of the charge was *De corpore Comitatus blanc & numero,* now it was changed, *viz.*

De Firma de corpore Com'	100*l.* bl.
De numero Comitatus	40

And thus the manner of the charge ſtood for the times of *H.* 3. and *E.* 1. and for ſome time before, at leaſt in ſome Counties: and ſo it continues

continues to this day with ſuch alterations as ſhall be ſhewn.

And as the *Corpus Comitatus* thus by uſage grew a Firme, or Rent charged upon the Sheriff, ſo alſo did the *Crementum Comitatus* in thoſe Counties where ſuch *Crementa* was anſwered, *viz.*

De Firma Comitatus	100*l.*
De numero Comitatus	40
De Cremento Comitatus	10

All being governed by the word *Firma*: For, as I have ſaid, a long letting of theſe Vicontiels to Firme, had brought them to be a ſetled charge, charged upon, and anſwered by the Sheriff; and he gathered up the Vicontiels to his own uſe, to make himſelf a Saver, and to make good his Firme. And thus much concerning the anſwering and altering of the charges of the Vicontiels, or the *Corpus Comitatus* both before and after it was in Firme.

2. As concerning the *Proficuum Comitatus*, the proceeding was much the ſame as that concerning the *Corpus Comitatus.*

In the ancienter times, when the *Proficua Comitatus* was at all anſwered by the Sheriff, it was anſwered by him, as *Cuſtos* or Bayly upon Accompt: Though in ſome ancient Pipe-rolls, for ſome Counties we find no diſtinct mention of it; as in the Pipe-roll of 19 *R.* 1. *Glouc.* Herbertus *reddit compotum de* 372*l.* 14*s.* 6*d.* bl. *de Firma Comitatus.* The like, *ibid.* 13 Johannis. But very frequently afterwards the Sheriffs, when they had the *Corpus Comitatus*, or the Certain Annual Revenues under a

Firme, yet anſwered the *Proficua Comitatus* as *Cuſtos* or Bayly: for inſtance, *Pipe-roll* 9 *R.* 1. Bedf. & Bucks, Simon *de Bello campo reddit compotum de* 369*l.* 19*s.* 11*d.* bl. *Et de* 79*l.* 8*s.* 1*d. numero, de Firma Comita'*, without mentioning the *Proficua Comitatus.*

But in the Pipe-roll 25 *H.* 3. Bedf. & Bucks, Paulinus Pejor, *ut Firmarius reddit compotum de* 369*l.* 19*s.* 11*d.* bl. & *de* 108*l. numero de Firma Comitatuum.*

Idem Vicecomes reddit compotum de 100 *marc' pro proficuo Comitat.*

And *Anno* 44 H 3. Alexander Hampden, *ut Fimarius reddit compotum de* 369*l.* 19*s.* 11*d.* bl. & *de* 108*l. numero, de Firma Comitatuum.*

Idem A. *reddit compotum de* 220 *marc' pro proficuo Comitat' ſicut continetur in originali.*

And in 51 H. 3. Galfridus Rus *ut Firmarius de anno* 50 *reddit compotum de* 369*l.* 19*s.* 11*d.* bl. & *de* 108*l numero de Firma Comitat'.*

Idem Galfridus *reddit compotum de* 180 *marc' pro proficuo Comitatus de anno* 50. *ſicut continetur in quodam Rotulo attachiato originali ejuſdem anni.*

And in the Year following, Edvardus *filius Regis primogenitus*, Barthol. *de Irene Subvicecomes ejus reddit pro eo per breve Regis, compotum de* 369*l.* 19*s.* 11*d.* bl. & 108*l. numero de Firma Comitatus hoc anno.*

Idem E. *Vic' non reddit de aliquo proficuo Comitat' quia Rex ei commiſit dictos Comitatus reſpond' inde per annum de antiqua Firma corporis, ſicut continetur in originalo anni precedentis.*

And ſo in the great Roll of 50 *H.* 3. Glouc. Reginaldus *de Ale de* 372*l.* 14*s.* 6*d. de Firma Com'*,

Idem

Idem Vicecomes reddit compotum de 80 *marc' pro proficuo Com' & exit' ville & nundinorum & Hundredi de* Wencham *ſicut continetur in quodam Rotulo*, &c. and ſo it continued in the time of *E.* 1.

By which it is evident, 1. That ſomtime there was nothing at all anſwered *pro proficuis*, but it was caſt into the Firme of the County. 2. That although the body of the County, conſiſting of a certain yearly Revenue was in Firme, yet oftentimes the *Proficua Comitatus* were not in Firme, but the Sheriff accompted for them *ut Cuſtos*, ſometime higher, ſometime lower, as the profits aroſe.

But in proceſs of time the *Proficua Comitatus*, at leaſt in ſome Counties, fell under a Firme, though in ſome Counties ſooner, in ſome later; and having once begun to be in Firme, the ſucceeding Sheriff took it as his predeceſſour left it; and ſo it became in time a ſetled Firme, though not expreſsly reſerved upon the Patent of every Sheriff.

And yet in ſuch caſes it was become a ſetled Firme, by uſage and cuſtom; yet when the Sheriff found that his Firme was too great for theſe profits (which were caſual, ſometimes more, ſometimes leſs) he was in thoſe elder times admitted to accompt *ut Cuſtos*, without being bound to anſwer his entire Firme, unleſs he ſaw fit. But that was rarely in uſe after the time of *H.* 4. and accordingly it ſeems to be intimated in that ordinance of 54 *H.* 3. above mentioned, for writing the great Roll of the Pipe, *viz. de Firmis pro Proficuis, vel de Proficuis.* And this ſhall ſuffice for the unridding of the Sheriffs Accompts till the 10 and 11 *Ed.* 1.

CHAP.

CHAP. VII.

The Second Period of the Sheriffs Accompts, viz. *How they stood from* 10 E. 1. *until* 34 H. 8.

WE have in the former Chapter seen how the Statute of the Sheriffs Accompts stood in relation to the annual Revenue of the County, whether Certain or Uncertain, and both stand now reduced under a Firme, *viz.*

1. The *Corpus Comitatus* answered under a Firme; partly *blanc*, and partly *numero.*

2. The *Proficua Comitatus* gradually also reduced into a Firme intirely *numero*; but with a liberty for the Sheriff to ease himself of the excess of his Firme above the profits, by submitting to an accompt of these profits as Bayly or *Custos.*

It fell out in process of time that the Kings of *England* granted away many of those Vicontiel Rents, and the Lands upon which some of them were charged, whereby the Sheriff lost much of what was to make up the Firme of his County. And although the Sheriffs, upon shewing thereof upon their Accompts, had an allowance of that which was so granted away, yet it made a trouble and disorder in the Sheriffs Accompts.

And therefore it was necessary to have some provision for the same, but this only con

concerned that part of his Firme which was of the *Corpus Comitatus*, or the Firme of the Certain Annual Revenue. Therefore by the Stat. of *Rutland* 10 *E.* 1. this provision is setled.

Quod non scribatur de cetero corpora Comitatum in Rotulis singulis, quin scribantur in quodam Rotulo annuali per se, & legantur singulis annis super compotum Vicecomitis singula, viz. *in singulis Comitatibus, ut sciatur si quid nobis possit accidere in quocunque Comitatu. Remanent vero eorundem Comitatuum post terras datas scribatur in Rotulis annualibus & onerentur inde Vicecomites. In quibus quidem remanentibus allocentur liberationes, eleemosyne,* &c. *Scribantur etiam in eisdem Rotulis annualibus Firme Vicecomitum, proficui Comitatus, firme Serjantiar' & Assartor', Firme Civitatum, Burgorum & Villarum, & alie Firme de quibus est responsum annuatim ad Scaccarium predictum. Scribantur in eisdem omnia debita terminata & omnia grossa debita de quibus spes est quod aliquod inde reddi possit. Item omnia debita que videntur esse clara, titulum de novis oblatis. Nihil scribatur in Rotulo Annuali nisi ea de quibus est spes,* &c. *De Firmis vero mortuis & debitis de quibus non est spes, fiat unus Rotulus, & irrotulentur & legantur singulis annis super Compot' Vicecom' & debita de quibus Vicecomes respondebat scribantur in Rotulo annuali & ibi acquietentur.*

And by this Act these alterations were made.

I. The state of the yearly Rents which heretofore made up the *Corpus Comitatus* was examined, and it was considered what parts thereof had been granted out by the King, to the end that the Sheriffs Firme of the body of

of the County might be abated with respect to those grants; which reduction of the Firme is stiled *Remanentia Firme post terras datas.*

II. The old stile of *Corpus Comitatus* was now put out of the charge; and whereas formerly the Sheriffs charge was *De Firma de corpore Comitatus*, now it was changed, and the charge was *De remanente Firme post terras datas:* And accordingly it was forthwith altered in the great Roll, only when those remaining Rents that were to make good this *Remanentia Firme*, did consist of Rents *blanc*, or of Rents *numero* onely, it was accordingly written, *viz.* in this manner.

De remanente Firme de Com'	100*l.* bl.
De numero Comitatus	50

III. There was to be extracted out of the great Roll the old Rents that made up the *Corpus Comitatus* and the title thereof, and those Firmes that were *Firme mortue* or *obsolete*, illeviable Firmes, and those debts that were desperate, and the great Roll of the Pipe (which was written every year) was to be disburthened of them, and they were to be transcribed into another Roll called an Exannual Roll.

This Exannual Roll to be yearly read to the Sheriff upon his Accompt, to see what might be gotten: And if any thing appeared to be good, then the same to be recharged again upon the great Roll of the Pipe.

IV.

IV. But there was no alteration hereby made of the *Firma de Proficuis*: So that by this Act as in relation to the Firmes and Rents of the County these things were done. 1. Those Firmes or Rents that were wholly granted away, were wholly put out of charge, whether they were assart Rents or Firmes charged upon particular Persons or Land, or that were within the Sheriffs Firme as Vicontiel Rents. 2. If any Vicontiel Rents that made up the Sheriffs *Firma de corpore Comitatus* were granted out, the Sheriffs Firme was abated in respect thereof. 3. If there were any Obsolete or Dead Rents, that were either Vicontiel Rents or charged upon particular Lands or Persons which had not been a long time answered, they together with the *Corpus Comitatus* were removed out of the Annual Roll and transmitted into the Exannual Roll read yearly to the Sheriff, to see whether any hope of levying them: But their writing out in charge in the great Roll suspended till they might be after discovered to be leviable.

And accordingly presently after the making of this Act, the Firme of the Sheriffs charge in the Summons of the Pipe and the entry thereof upon the great Roll was changed, and this memorial is made upon the Pipe-roll for every County.

Corpus hujus Comitatus non annotatur hic, sed annotatur in quodam Rotulo in quo scribuntur omnia corpora Comitatuum Angliæ *in manu Regis existentia simul cum Firmis mortuis & debitis quasi desperatis quæ debent singulis annis legi & recitari super Compotum Vic' ut sciatur quid inde accidere possit Regi ex quacunque causa quæ sunt in*

in Thesauro. In quibus etiam continetur quod inde Vicecomites onerentur in compotis suis predictis de remanentibus Firmarum Comitatuum post terras datas. Et quod in eisdem remanentibus allocentur liberationes & Eleemosyne constitute & alie allocationes si quas Vic, habuerint per Br'ia Regis de eorundem exitibus.

And according to this Act and Memorandum the great Roll was certified: For instance, before this Act the great Roll for *Gloucester* did run thus.

J. F. *reddit compotum de* 372*l.* 13*s.* 6*d.* blanc. *de Firma Comitatus.*

But after this alteration it runs thus.

In the great Roll 12 *E.* 1. Rogerus *de* Lockington *Vicecomes reddit compotum de* 38*l.* 14*s.* 11*d.* blanc. *de remanente Firme Comitatus post terras datas.*

Idem Vic' reddit compotum de 80 *marc' de Firma pro proficuis Comitatus* (which was the old Firme thereof before 10 *E.* 1.)

So again in the Pipe-roll 10 *E.* 1. which was the Accompt of the year next before the making of this Act the Roll runs thus, *viz.*

Bedf. Bucks, Richardus *de* Gollington *reddit compotum de* 319*l* 19*s.* 11*d.* bl. *& de* 108*l.* *numero, de Firma Comitatus. Et reddit compotum de* 180 *marc' de Firma pro proficuo Comitatus sicut* Johannes *de* Chedley *reddere consuevit.* In the Roll next after the making of this Act it runs thus.

Richardus *de* Gollington *Vic' reddit compotum de* 17*l.* 7*s.* bl *de remanent' Firme Comitatus post terras datas sicut supra continetur, & de* 108*l.* *de Firma numero.*

Et Vic' reddit compotum de 100 *marc' de Firma pro proficuis ſicut continetur in Rot.* 11 : By which inſtances theſe things appear, *viz.*

1. That the *Firma de Proficuis* continued the ſame as before: For therein no alteration was made by the Stat. of *Rutland.*

2. That the Title of the *Firma de corpore Comitatus* was changed into the Title *de remanante Firme Comitatus poſt terras datas.*

3. That the quantity of the Firmes were reduced to ſmaller Sums with reſpect to thoſe Firmes or Lands charged therewith formerly and ſince granted out.

4. That yet the Titles of *Blanc* and *Numero* continued or were omitted as the nature of the Vicontiel Rents that remained ungranted were, *viz.* When all the *blanc* Rents were granted out, the Firme *de remanente* was anſwered only *numero*. Where all the Rents *numero* were granted the Sheriff anſwered his Firme wholly *blanc*. If part of his Rent *blanc* were granted and nothing of thoſe Rents that were anſwered *numero*, he anſwered the remaining part of his Firme *blanc*, and the entire reſidue *numero*. For the Sheriffs Firme of the County before, and *de remanente* now, did anſwer to the quantity, and alſo to the nature or quality of thoſe Vicontiel Rents that he was to receive to make good his Firme

But abating that one alteration from *Firma corporis Comitatus* to *de remanente Firme*, and the abridging of the Firme as before, and the diſcharging both of the Summons of the Pipe and the great Roll of thoſe charges that were tranſcribed into the Exannual Roll, the reſt, both of the charge and great Roll continued as before.

But

But notwithstanding this provision gave some ease to the Sheriffs in relation to those Firmes, yet the charging of them with these Firmes became a matter of continual complaint, for that they were still charged with these Firmes, yet many of the Rents and benefits that should make good their Firmes were sold or became illeviable after *Rot. Parl.* 25 *E.* 3. *n.* 39. *Item pry les Commons que touts Vicounts que sont charge de certain Fermes pur les Counties ou ils sont Vicounts soient discharge de ceo post resceit de lour Baily per cause de Franchises grant Ronne breve soit mand al Treasurer & Barons deschequer quills faient due allowances al chescun Vicount sur le render de lour Accompts en chescun case la ou ils voilent quil soit reasonable.*

And in the same Parliament in 47, the Sherifts of *Bedf.* and *Bucks* pray to be discharged of the Firmes of the Baylywick of their Hundreds, because those Baylywicks yielded no profit: They are remitted to the Exchequer, *Rot. Parl.* 45 *E.* 3. *n.* 45. The Sheriffs of *Essex* and *Hartford*, pray an ease in respect of illeviable Firmes charged upon them, and Hundreds and Rents granted from them: Answered, *Le Roy lour ad fait grace.*

By the Statute of 1 *H.* 4. *cap.* 11. upon the complaint that the Sheriffs are charged with the ancient Firmes of their County, notwithstanding that great part of the profits of the same be granted to Lords and others: It is enacted that the Sheriffs shall accompt in the Exchequer and have an allowance by their Oaths of the issues of their Counties.

Rot. Parl. 11 *H.* 4. *n.* 46. *& sequent'.* The Sheriffs of several Counties complain that they

they are charged with ſeveral ancient Firmes which they are not able to levy, *viz.* *Eſſex* and *Hertf.* with the Firme of the County, and the Firme of the profits of the County: *York* with the Firme of the County *poſt terras datas. Devonſhire* with the *remanent' Firme Comitatus poſt terras datas*, the *Firma de Proficuis Comitatus*, and a certain Firme of 100 marks called blanch Firme. *Norfolk* and *Suffolk* with a Firme called *de remanent' Firme poſt terras datas*, and *Firma de Proficuo Comitatus*, whereof they complain that they cannot levy any thing, and beſides the Hundred and Liberties granted out to the diminution of their Profit; and pray remedy according to the Stat. of 1 *H.* 4.

They are referred to the King's Council to make ſuch pardon and mitigation as they ſhall think reaſonable.

Rot. Parl. 1 *H.* 5. *n.* 34, 35. The like Complaints are made in the behalf of the Sheriffs, and prayed that they may have allowances out of their Firmes upon their Oaths according to the Statute of 1 *H.* 4. But they have the like anſwer as before, *viz.* a reference to the Council.

But *Rot. Parl.* 4 *H.* 5. *n.* 24. and 4 *H.* 5. *cap.* 2. The like Petition is received, *viz.* that by their Oaths they may have an allowance of what they cannot levy out of thoſe great Firmes that are charged *ſub nomine Vic'*, *viz.* Firmes of their Counties, *blanc* Firmes *de novo incremento* &c. But inſtead of redreſs, they loſt that Benefit which the Statute of 1 *H.* 4. had before afforded them. And it is directly enacted that the Sheriffs ſhall have allowances by their Oath of things caſual, which lye not in Firme or annual demand: But of thoſe

D things

things which lye in Firme annual, or demand annual, they be charged as Sheriffs in aforetime had been charged. And thus ſtood the buſineſs of the Sheriffs Firmes until the Statute of 34 *H.* 8. which is the next Period.

CHAP. VIII.

Touching the State of the Sheriffs Firmes from the Statute of 34 H. 8. *till the fourteenth Year of the Reign of King* Charles 1. *which is the Second Period.*

WE have ſeen in the former Chapter how the caſe ſtood with the Sheriffs Firme after the Statute of *Rutland*, and how the Statute of 4 *H.* 5. *cap.* 2. bound the Firmes charged upon the Sheriffs, cloſer upon them than for ſome years before: And ſo they continued till the making of the Statute of 34. *H.* 8. *cap.* 16.

This Statute recites thoſe ſeveral Firmes charged to the Sheriff *ſub nomine Vicecomitis*, viz. *de remanent' Firme poſt terras datas: Firma de Proficuo Comitatus*, and thoſe other minute Firmes demanded *ſub nomine Vicecomitis.* And many of theſe particular ſmall Rents that made up theſe Firmes charged upon the Sheriffs are loſt or not leviable, or extinguiſhed by Attainders and Diſſolutions of Monaſteries

ries, and yet the Sheriffs continue charged with their Firmes as formerly. It Inacts,

1. That all Sheriffs that have no Tallies of Record, ſhall upon their days of prefixion deliver in Rolls or Schedules of Parchment containing the particular Sums of Money which he hath or might have levied as parcel of the ſaid ancient Firmes, naming the Perſon and Lands of which they are to be levied.

2. That after ſuch Schedules delivered, the Court ſhall have Power to allow and make deductions in the ſaid Sheriffs Firmes of all ſuch Sums of Money as the Firmes ſhall be more than the Sums in ſuch Schedules ſhall amount unto.

3. And the Court ſhall proceed to the recovery of ſuch Sums belonging to the ſaid Firmes as are omitted in ſuch Schedules.

4. That the Sheriff have allowance and diſcharge of all ſuch illeviable Sums as are written to him in proceſs.

5. That the Sheriff have allowance for entertainment of Juſtices, *&c.*

But this was but a temporary Act, and diſcontinued at the next Parliament. But a farther Act was after made for the eaſe of the Sheriff, eſpecially in relation to thoſe Firmes, *viz.* 2 and 3 *E.* 6. *cap.* 4. By this it is enacted,

1. That the Sheriff ſhall have ſuch allowances and Tallies of reward as they had before the Act of 34 *H.* 8. or may accompt according to the Act at their election.

2. That they that accompt and take no Tally of Record ſhall be treated in the Exchequer as though the Act of 34 *H.* 8. were in force.

3. That those that have no Tallies of reward shall have allowance of the Diet of the Justices, &c.

4. That all such Sheriffs as take no Tallies of reward shall be discharged of all Firmes, Goods, Chattels, Profits, Casualties, &c. as they cannot levy or come by.

5. That all that have Tallies of reward shall be discharged of all Firmes and Sums of Money that they cannot levy, except Vicontiels, with which they are to remain chargeable as before the making of the former Act.

6. That Sheriffs shall have allowances of such Vicontiels as are extinguished by unity of possession in the Crown by dissolution of Monasteries.

7. That the Sheriff at his day of prefixion when he is sworn to his accompt, shall be sworn to deliver into the Court of Exchequer, Rolls or Schedules of Parchment containing all the particular Sums of Money which he hath levied or might levy of his Vicontiels or other Firmes, mentioning the Persons and Lands of which they are leviable, and the Court to take care for the levying of such of the Vicontiels, or Firmes, which are omitted out of the Schedules, for saving the King's Rights, and to make out process for the same.

Upon these Acts these things are observable.

I. That those Sheriffs that have Tallies of reward may not discharge themselves of their Vicontiels

Vicontiels, *viz.* the *Remanent' Firme post terras datas*, and *Cr'o Comitatus*, and other small Rents charged *sub nomine Vicecomitis* (if he take his Tally of reward) by oath that he cannot levy it, or all of it.

II. But if such a Sheriff will wave his Tally of reward, he may accompt according to the Statute of 34 *H.* 8. and so discharge himself of his Vicontiels or Firmes thereof as well as other Firmes. And the truth is, I think, anciently there were some Sheriffs that had Tallies of reward, *viz. York*, *Northampton*, *Cumb'land*, *Hereford*, &c. But since the making of this Act they have waved them, accounting it more beneficial to take the benefit of those Statutes upon their accompt, than to take their Tallies of reward. So that now all Sheriffs have an equal benefit of the Statutes of 34 *H.*8. and 2 and 3 *E.6.*

III. But those Sheriffs that had no Tallies of reward might discharge themselves of their Vicontiels and Firmes *de remanente Comitatus*, as well as other things that they could not levy.

IV. That all Sheriffs, as well those that had or had not Tallies of reward might discharge themselves of the casual charges, or their annual uncertain charges; and consequently might, and most ordinarily after this Statute did discharge themselves of the entire Firme *de proficuis Comitatus*, in case the profits of their Counties did not surmount the charge that attended them. And by this means since the

the making of this Statute, those Sheriffs that were charged with the *Firma de proficuis* rarely if at all answered any thing for it, because they have always ascertained the Court that there were no such profits beyond the charge in collecting them: or that the charge of keeping the County-Court, the Turns, the Hundred-Courts, which were the things that made up the *Firma de proficuis*, surmounted the benefit.

V. And this making appear was no other than the Oath of the Sheriff, that he could not levy this or that Rent, parcel of his Vicontiels, or that there were no *Proficua Comitatus*, &c. And this Oath of the Sheriff hath always been the Warrant to discharge him of all or any part of his Firmes. By which means it hath most ordinarily come to pass, that although the Sheriff hath paid in his Profers at Easter and Michaelmas, yet when he comes upon his accompt he doth by his Oath discharge himself of all his *Firma de remanente Comitatus*, and thereby most times the King becomes Debtor to the Sheriff for those Moneys which he received as Profers, or Moneys due by the Sheriff upon his Firme.

And it is but reason; for the Statute gives him that just benefit to discharge himself by his Oath of what he cannot levy or receive.

And yet though the Sheriffs have constantly by their Oath discharged themselves of the entire Firme *de Proficus Comitatus*, and of a great part of their other Firmes of the Vicontiels, or *Remanent' Firme*, and other Rents charged

charged upon them in groſs Sums, by ſwearing the illeviableneſs of ſome of thoſe Vicontiels which make up thoſe *Remanent' Firme Comitatus* and groſs Sums, yet conſtantly after this Act and until the year of our Lord 1650 the entire Firmes, *viz.* the entire Firme of the *Remanent' poſt terras datas*, and the entire Firme *de proficuis Comitatus*, were conſtantly written out in charge to the Sheriff upon the Summons of the Pipe, and entirely charged upon the great Roll, as they had ever been ſince the Statute of *Rutland*, and in the very ſame manner, though in truth it was for the moſt part but an idle piece of formality; for the Sheriffs conſtantly ſwear it off by virtue of the Statute. And thus by theſe Statutes the Sheriff had eaſe by his Oath from that part and thoſe parts of his Firmes that he ſweared he could not levy.

But the truth is the Sheriffs have taken that part of the Statute which was for their eaſe, *viz.* to ſwear in diſcharge of their Firmes, but have too much omitted that other part of the Statute that was for the King's advantage, *viz.* the delivery in upon their Oaths the Schedules of their Vicontiels: by which omiſſion poſſibly many ſmall, but good, Rates have been loſt ſince the Statute of 2 and 3 *E.* 6. which might have been preſerved. Although poſſibly the far greater part were loſt long before, as appears by the complaints of the Sheriffs in relation to their Firmes, in the Parliament Roll of 11 *H.* 4. above mentioned. nd thus the Sheriffs Firmes ſtood until the 15th of King *Charles* the firſt.

CHAP. IX.

The Third Period from the fifteenth Year of King Charles *the first, until the Year of our Lord* 1650, *and how the Sheriffs Firmes and Accompts stood in that interval.*

BY an Order of the Court of Exchequer made the 25th. *Junii*, 15 *Car.* 1. upon the complaint of the King's Firmor of decayed Rents it was ordered that the Clerk of the Pipe should cast up and compute, and severally and distinctly put in charge arrearages of decayed Rents and parcels of Rents, that process and commissions might be made forth thereupon by virtue of the Order. But this proved uneffectual; for although the same was done accordingly, yet the King received little advantage thereby, neither did it at all convenience the Sheriff, or alter the charge written out in the Summons of the Pipe, or upon the great Roll. For the Firmes continued still in charge as before, without any alterations: And though somewhat of small consequence was found out, which might help to make good the Sheriffs Firmes in some particulars, yet the same still fell short, and the Sheriffs were still enforced to make use of the advantage of the Statute of 2 *E.* 6. to ease themselves by their Oath of illeviable Rents, till the year 1650.

CHAP.

CHAP. X.

The Fourth Period of the Sheriffs Firmes from the Year 1650 *unto this day, and how they were answered in that interval.*

IN the times of the late troubles, *viz.* 6 *Julii*, 1650. there was an Order made in the Court of Exchequer touching the Sheriffs Firmes and the Vicontiel Rents, which because it hath set a Rule in this Business, which to this day is observed, I shall here transcribe *verbatim.*

" Whereas the Sheriffs of several Counties of " *England* stand charged in the great Roll of " the Pipe, and have so stood charged ancient-" ly with divers Sums of Money in gross, " *sub nomine Vicecomitis*, under the several Ti-" tles of *de rem' Firm' Com' post terras datas*: " *de veteribus Cr̃i Comitatus. De Firma de pro-" ficuo Comitatus. De Cornagio. De Warda Ca-" stri. De Firma perprestur' & escaet. De e-" mersis Firmis. De minutis particulis. Serjan-" tia de tr̃is Assart' infra diversas Forestas*, and " the like. And the said Sheriffs yearly, and " from year to year, have been and still are " commanded by the Summons of the Pipe, " to levy the same as heretofore to the use " of the Crown, so now to the use of the Com-

" mon-

"mon-wealth, without expressing where, of "whom, for what cause, or out of what Lands "or Tenements the same are particularly to "be levied by the said Sheriffs, or out of what "particulars the said Sums in gross do so "arise; in regard where, and that it hath here- "tofore appeared in the time of King *H.* 8. "upon complaint of the Sheriffs, that a great "part of the particular Rents and an- "nual Sums of Money, wherewith the said "Sheriffs do stand charged upon their Ac- "compts in g oss, had been long before that "time payable by Monastaries, Abbots, Pri- "ors, attainted Persons, and the like, whose "Estates were come to the Crown, and so "ought to be discharged by unity of possessi- "on; and yet that the said Sheriffs were still "charged in gross with the same, to their "great burthen and grievance; it was in the "34th year of the said late King *H.* 8. en- "acted by Parliament in the case of these "Sheriffs, and of all Sheriffs for the time to "come; that the said Sheriffs should be charged "to answer upon their Accompts yearly such "Rents and Sums of Money of the natures a- "foresaid only, as by the particular Rentals or "Vicontiels, by them to be yearly delivered in "upon oath, they should set forth and make "appear to be by them leviable; and that "they should be discharged of all the residue "which they upon their Oaths should affirm "to be illeviable, by virtue of the said Act of "Parliament, which hath been so continued "accordingly, ever since. Howbeit the She- "riffs have from time to time complained, "and still complain against the writing

"forth

"forth of more to be levied and answered "by them upon their Accompts, than such "Rents and Sums of Money only as ap- "pears upon the Oaths of their Predecessors, "Sheriffs, to be leviable; and that the rest, "appearing to be illeviable, ought to be re- "moved out of their said annual Roll, and "Commissions thereupon to be awarded out of "the Exchequer, for reviving the same ac- "cording to the true intention of the said Sta- "tute of 34 *H.* 8. which the now Lord Chief "Baron, and the rest of the Barons, taking "into their serious consideration, and being "willing and desirous, so far forth as may "stand with the preservation of the due rights "of the Commonwealth, to give all fitting ease "and satisfaction to Sheriffs therein, accord- "ing to the meaning of the said Statute of 34 "*H.* 8. and according to the Statute of *Rutland*, "10 *Ed.* 1. whereby it is provided that nothing "shall be written out to the Sheriffs but such "Firmes and Debts whereof there is some hope "that something may be levied. And that all "dead Firmes and desperate Debts are to be "removed from the annual or great Roll in- "to the exannual Roll, and not to be writ- "ten forth in process to the Sheriff, but to "be inquired of to see if any thing may be "revived. Whereupon the said Lord Chief "Baron and the rest of the Barons, calling "before them the Clerk of the Pipe, with "the Secondaries, and the rest of the sworn "Clerks of the said Office, and upon debate "of the business, finding it to be a work of "great difficulty, labour and care, to exa- "mine and set forth in every County, from

" the

" the Originals and Records of such antiqui-
" ty to be compared with later times, the
" particulars which are from henceforth to
" be written to the Sheriffs to levy in cer-
" tain. And such as are for the reasons a-
" foresaid to be removed out of the said an-
" nual Roll, have nevertheless in ease of all
" Sheriffs for time to come, with respect
" to the labour and care of the Officers and
" Clerks to be by them undergone therein.
" It is this day ordered, that the Clerk of the
" Pipe, the Secondaries and other sworn
" Clerks of the said Office in their several
" Assignments shall in pursuance of the said
" Statute of *Rutland*, and the said Statute of
" 34 *H.* 8. use their best endeavour, dili-
" gence and care, with as much convenient
" speed as a work of so great labour and
" consequence may well be performed, ful-
" ly to explain and set forth, and shall
" from henceforth fully explain and set
" forth, in the subsequent annual Roll of
" this Court, so many of the particular
" Rents as they find out and discover by
" any of the Remembrances, Books, Vi-
" contiels of Sheriffs, or other Records of
" this Court, to have been, and which be
" appertaining to the making up of every
" of the said Firmes so charged in gross
" Sums as aforesaid, and shall therein di-
" stinguish which and how much of those
" particular Rents have been and are to be
" yearly answered.

" And so much of the said Firmes as can-
" not be explained by setting forth the parti-
" culars

"culars, together with the particulars fo fet forth "and explained, which have been in decay and "unanfwered by the fpace of forty years laft "paft, and which are become illeviable, fhall "be thereupon removed and conveyed out of "the faid annual Roll and Sheriffs Accompts "into the exannual Roll of this Court. And "that Commiffions and Procefs fhall be from "time to time awarded to regain and recover "the fame, according to the true intention of "the faid Statutes.

This Order produced thefe Effects.

I. Great care was taken to collect and fet forth the obfcure Rents, and upon what they were charged.

II. The particulars of thofe Rents and Vicontiels that made up the Sheriffs Firmes formerly, of *Remanent' Firme poft terras datas*, and *De Cremento Comitatus*, as alfo thofe Rents that were charged upon the Sheriffs in grofs Sums, as *De diverfis Firmis, de minutis particulis Serjantiarum*, and fuch other charges in grofs were wholly left out and omitted.

IV. Inftead thereof fuch particular Rents and Vicontiels as made up formerly thefe Firmes and grofs charges, or Money of them as could be difcovered were particularly written out in the Summons of the Pipe, and in the great Roll firft under the title of feveral Hundreds, wherein the Bills lay that were charged or had any Lands charged within them with thefe Vicontiels and the feveral Vills under the Titles of

of theſe Hundreds, and the ſeveral Lands that were charged within thoſe Vills, as far forth as could be diſcovered.

V. Thoſe Vicontiels that were part of thoſe Firmes or groſs charges, and likewiſe ſuch particular Rents charged formerly in the annual Roll in particular, which had not been anſwered in forty years before, were removed out of the Summons of the Pipe and great Roll into the exannual Roll to be put in proceſs as they could be diſcovered. And thus the form of the charge which had continued ever ſince 10 *E.* 1. as to the Firmes and groſs Sums, was too lately changed to the great eaſe of the Sheriffs, of the Court and of the People, who were often haraſſed by the Sheriffs to make themſelves ſavers, by levying theſe obſcure, incertain and illeviable Sums. And all this without any detriment to the King, who indeed before had an appearance of great Firmes and Sums expreſſed in the Summons of the Pipe and great Roll, which yet were ſworn off too little by the Sheriffs in purſuance of the Statute of 23 *E.* 6.

VI. But beſides all this, the *Firma de proficuo Comitatus* was alſo wholly laid aſide and put out of the charge of the Summons of the Pipe and the great Roll. It is true there is no clear warrant for putting the Firme out of charge by that order, for that order ſeems to extend only to Rents and Vicontiels, which indeed made up the other in Firmes and groſs Sums charged upon the Sheriffs. But this Firme was anſwered for the Profits of Courts and

and other casual Perquisites, and not in respect of any Vicontiel or annual Rent. But yet for all that, the true extent of that order might extend to put that Firme wholly out of charge, since it is apparent that the profits of the Sheriffs Courts, whether Hundred-Courts, County-Courts, or *time*, do scarce quit the charges of keeping them at this day, nor for a long time past. Neither is the King *de facto* at any loss thereby, for though before this order this Firme was indeed in charge and carried the shew of some benefit to the King, yet it was wholly sworn off by the Sheriffs by virtue of the Statute of 2 and 3 *E. 6.*

Only it seems reasonable that though the *Firma de proficuis* be put out of charge so that the Sheriff should not be compelled to answer a Firme to that which yields little or no benefit, yet that the Sheriff should be charged to accompt for the *Proficua Comitatus* as Bayly or *Custos* though not as Firmor.

And that therefore there should stand in charge upon him to accompt *de Proficuis*, which all that I can find considerable to be supplied in that order, or in the present methodizing of the great Roll in Relation hereunto. And although this order was made in the late time of trouble, yet it hath obtained and stood in force unto this day.

The late Act of this Parliament, intituled *An Act for the preventing of the unnecessary delays of Sheriffs*, &c. hath this Clause suitable to the said order, *viz.*

" And to the end that Sheriffs may for the
" time future be eased of the great charge and
" trouble

" trouble which they heretofore have been
" put to in paſſing their Accompts in the Ex-
" chequer, occaſioned partly in regard that di-
" vers Sums of Money have ſtood charged up-
" on them in groſs without expreſſing from
" what perſons, or for what cauſe, or out of
" what Lands and Tenements, the ſame are
" particularly to be levied, or out of what
" particulars the ſaid Sums in groſs do ariſe,
" whereby it cometh to paſs that the Sheriffs
" do ſtill ſtand charged in groſs with divers
" Sums of Money which were heretofore pay-
" able by Abbots, Priors, Perſons attainted,
" and ſuch other Perſons, whoſe Eſtates are
" ſince come to the Crown, or are otherwiſe
" diſcharged or illeviable. And partly by the
" Accompt of Seiſures or foreign Accompts,
" and by exaction of undue Fees of Sheriffs up-
" upon their Oppoſals. But it is enacted, *&c.*
" that no Sheriffs ſhall be charged in Accompt
" to anſwer any illeviable Seiſure, Firme, Rent
" or Debt, or either Seiſure, Firme, Rent, Debt
" or other matter or thing whatſoever, which
" was not writ in proceſs to him or them to be
" levied wherein, the perſons of whom, or the
" Lands and Tenements out of which, toge-
" ther with the cauſe for which the ſame ſhall
" be ſo levied ſhall be plainly and particularly
" expreſſed, but ſhall be thereof wholly diſ-
" charged without Petition, Plea or other trou-
" ble or charge whatſoever.

This Act had in effect diſcharged the old charges in groſs, had not this buſineſs been before ſettled by the order of 1650. But by that order the ſame thing is done and much more, and put into a very good order.

And

And thus I have done with this intricate Argument touching the Sheriffs Firmes. And the occasion of my strict enquiry into it was, a difference between the Auditors and the Clerk of the Pipe: Upon the whole debate whereof, I found only these matters.

1. That, in truth, the great occasion of complaint was, that the Clerks of the Pipe used different methods of accompting from the Auditors of the Revenue, the not observance whereof occasioned a mistaken representation by the Auditors that there was a deceit in their Accompts, whereas it appeared to be no such thing: For when both accompted their several ways, the issue was that the Accompts agreed in the conclusion.

2. That the Firme *de proficuo Comitatus* was put out of charge without Warrant, and it was thought by the Auditors, a great and considerable loss to the Crown, supposing that the Fees for execution of Process and Writs were to make up that Firme: But this is sufficiently unriddled before.

3. That there was an allowance to the Sheriff of *Bucks* of a considerable yearly Sum, *ut Apparatori Comitatus:* This indeed ought not to be allowed at this day, the reason thereof ceasing, as hath been shewed; and therefore from henceforth that charge is to be disallowed, but the Clerk of the Pipe not greatly blamable herein, because there was an order of the Court in the Queens time for making that allowance: But the reason whereupon that or-

der was made was a miſtake and an errour in the Court, not in the Clerk that followed the order.

4. That there is no accompt given for the Firmes of Baylywicks as was anciently; which indeed, was parcel of the *Proficuum Comitatus*, as hath been ſhewed. But the truth is, there is no great reaſon for any ſuch complaint, the Firmes of Baylywicks being taken away by Act of Parliament, and levy diſuſed in moſt places.

5. That when the Sheriff is in Surpluſage, they make it good unto him out of any other debt by the Sheriff himſelf, or any other Sheriff of the ſame or any other County, without any Warrant from my Lord Treaſurer or the Court. And beſides that, the other Sheriff is diſcharged upon the Roll of his Debt, and it doth not appear upon what reaſon. And indeed, this is a thing fit to be reformed, and that ſuch allowances be not made without Warrant from the Lord Treaſurer, or Order of Court, and that an Entry or Memorandum thereof be made upon the Roll of the Debts ſo diſcharged. But yet, the truth is, this manner of allowance hath been a long time uſed, and it is no novelty or late attempt, neither is there any great damage to the King by it, for it is but the payment of one real Debt with another. But howſoever, this is fit to be reformed by order of the Court, that the Sheriffs deliver not in the Roll of the Vicontiel as is required by the Statute. And it is true, he ought to do it, or ſhould be ſworn thereunto,

thereunto. But the neceſſity is not now ſo great, becauſe the particular Rents are now charged upon the great Roll by virtue of the order of 1650, which doth in a great meaſure ſupply that defect, and yet the delivery in of the Vicontiel Roll may be fit to be revived.

The moſt of the reſt of the complaints were touching particulars miſcharged, or not charged, but the Errours were rather in the Complainers than in the Pipe, and for want of a clear underſtanding of thoſe intricate and obſcure proceedings of the Pipe. And upon a full ſearch of the particulars, I find the Clerks of the Pipe gave very clear ſatisfaction therein.

Upon the whole matter of theſe Accompts, I do obſerve theſe Two or Three Obſervables.

I. That the inconvenience of retaining the old formalities of proceedings, the ſame terms and words, and very ſame mood of all things in Accompts, when the nature of things and times requires a change, and accommodation of new forms or expreſſions as a piece of hurtful ſuperſtition; therefore, although the change of forms of this nature is not to be done raſhly and precipitantly, yet when the exigence of things requires it, there muſt be an accommodation to the preſent uſe, underſtand-and exigence of affairs.

And hence it is that the Accompts of the Auditors of the Revenue are more eaſily intelligible, as being framed to the uſe and exigence of the times; but the Accompts of the

 Pipe

Pipe more myſterious and perplexed, to Perſons unacquainted with them, for till 10 *E.* 1. they kept in all things the preciſe form of writing their great Roll, as had been uſed in King *Stephen*'s time. And the ſame form they kept until 1650, abating the alterations made in 10 *E.* 1. not without great inconvenience to the King's people and Sheriffs.

II. That theſe ſmall Rents and Vicontiels would be with much more advantage to the King, and be ſold off to the ſeveral Perſons and Townſhips chargeable therewith, than be kept in method of collection, as now they are, unleſs ſome more ready collecting of them by the Receivers could be thought upon, provided the Money ariſing by ſale be laid out preſently in more certain Revenue: For, 1. They are in reſpect of their ſmallneſs, and diſperſedneſs, and uncertainty of charge and manner of collecting very ſubject to be loſt, as they have been commonly from time to time. 2. The charge of collecting and accompting for them by the Sheriff is very great, and the trouble and charge to the people very much more. 3. The coſt and trouble to the King in reſpect of Officers writing and other matters relating thereunto, might be well retrenched thereby. And yet when all is done, it brings a great trouble, and makes a great noiſe as if it were a Revenue of great moment, and yet by that time the Sheriffs have done ſwearing of particulars as illeviable, or that they know not where to charge it, it becomes a very pitiful inconſiderable buſineſs, and ſcarce anſwering the charge of the collecting, accompting and anſwering

ing it. For it muſt be obſerved that altho' by the order of 1650, the charge is more certain than formerly, yet the Sheriff hath ſtill by the Law the benefit of the Statute of 2 and 3 *E.* 6. even as to thoſe aſcertained Rent, and if he cannot find them, he is, and ought to be diſcharged upon his Oath thereof. And accordingly is daily diſcharged of many of thoſe Rents, though rendred much more certain by that order, and the pains and method of the Charge and Accompt, uſed in purſuance hereof. Whereby in proceſs of time, many, even of theſe Rents particularly charged by virtue of that order, will be ſucceſſively loſt.

Sed de his curent Superiores.

F I N I S.

THE CONTENTS.

CHAP. I.

Touching the Ancient and Modern Weight and Allay of Sterling Silver. Page 5.

CHAP. II.

Concerning the Weight of Coin, and the difference therein, with regard to the Denomination of Coin. p. 12.

CHAP. III.

Touching the Corruptions of Money, and the Remedies anciently used in Relation thereunto. p. 15.

CHAP. IV.

Concerning the manner of answering the King's Firmes anciently. p. 22.

CHAP. V.

Concerning the manner of collecting the King's Revenues of the County, and the several kinds of them, with their several Titles. p. 24.

CHAP. VI.

Concerning the manner how the Annual Revenue

Revenue of the County was usually answered in the ancient times until 10 E. 1. p. 33.

CHAP. VII.

The Second Period of the Sheriffs Accompts, viz. *how they stood from* 10 E. 1. *untill* 34 H. 8. p. 42.

CHAP. VIII.

Touching the state of the Sheriffs Firmes from the Statute of 34 H. 8. *till the* 14*th Year of the Reign of King* Charles I. *which is the Second Period.* p. 50.

CHAP. IX.

The Third Period from the 15*th Year of King* Charles I. *until the Year of our Lord* 1650, *and how the Sheriffs Firmes and Accompts stood in that interval.* p. 56.

CHAP. X.

The Fourth Period of the Sheriffs Firmes from the year 1650 *unto this day, and how they were answered in that interval.* p. 57.

A
TRYAL
OF
WITCHES,
AT THE
ASSIZES
HELD AT
Bury St. Edmonds for the County of *SUFFOLK*; on the Tenth Day of *March*, 1664.

BEFORE
Sir *MATTHEW HALE*, Kt.
THEN
Lord Chief Baron of His Majesty's Court of EXCHEQUER.

Taken by a Person then Attending the Court.

LONDON,
Printed for *D. Brown*, *J. Walthoe*, and *M. Wotton*. 1716.

TO THE

READER.

THIS *Tryal of* Witches *hath lain a long time in a private Gentleman's* Hands *in the* Country, *it being given to him by the Person that took it in the Court for his own Satisfaction; but it came lately to my Hands, and having perused it, I found it a very remarkable thing, and fit to be Publish'd; especially in these times, wherein things of this nature are so much controverted, and that by persons of much Learning on both Sides. I thought that so exact a Relation of this Tryal would probably give more Satisfaction to a great many Persons, by reason that it is pure Matter of*

Fact;

Fact, and that evidently Demonstrated; than the Arguments and Reasons of other very Learned Men, that probably may not be so Intelligible to all Readers; especially, this being held before a Judge, whom for his Integrity, Learning, and Law, hardly any Age, either before or since, could parallel; who not only took a great deal of Pains, and spent much Time in this Tryal himself; but had the Assistance and Opinion of several other very Eminent and Learned Persons: So that this being the most perfect Narrative of any thing of this Nature hitherto Extant, made me unwilling to deprive the World of the Benefit of it; which is the sole Motive that induced me to Publish it.

Farewel.

A

A Tryal of Witches.

At the Assizes and General Goal delivery, held at Bury St. Edmonds *for the County of* Suffolk, *the Tenth of* March, *in the Sixteenth Year of the Reign of our Sovereign Lord King* Charles II. *before* Matthew Hale *Knight, Lord Chief Baron of His Majesty's Court of* Exchequer; Rose Cullender *and* Amy Duny, *Widows, both of* Leystoff *in the County aforesaid, were severally indicted for Bewitching* Elizabeth *and* Ann Durent, Jane Bocking, Susan Chandler, William Durent, Elizabeth *and* Deborah Pacy: *And the said* Cullender *and* Duny, *being arraigned upon the said Indictments, pleaded* Not Guilty: *And afterwards, upon a long Evidence, were found* Gulty, *and thereupon had Judgment to* dye *for the same.*

The Evidence whereupon these Persons were convicted of Witchcraft, *stands upon divers particular Circumstances.*

I. THree of the Parties above-named, viz. *Ann Durent*, *Susan Chandler*, and *Elizabeth Pacy* were brought to *Bury* to the Assizes and were in a reasonable good condition: But that Morning they came into the Hall to give Instructions for the drawing of their Bills of Indictments,

ments, the Three Perſons fell into ſtrange and violent Fits, ſcreeking out in a moſt ſad manner, ſo that they could not in any wiſe give any Inſtructions in the Court who were the Cauſe of their Diſtemper. And although they did after ſome certain ſpace recover out of their Fits, yet they were every one of them ſtruck Dumb, ſo that none of them could ſpeak neither at that time, nor during the Aſſizes, until the Conviction of the ſuppoſed Witches.

As concerning *William Durent*, being an Infant, his Mother *Dorothy Durent* ſworn and examined, depoſed in open Court, That about the Tenth of *March Nono Caroli Secundi*, ſhe having a ſpecial occaſion to go from home, and having none in her Houſe to take care of her ſaid Child (it then ſucking) deſired *Amy Duny* her Neighbour, to look to her Child during her abſence, for which ſhe promiſed her to give her a Penny: but the ſaid *Dorothy Durent* deſired the ſame *Amy* not to Suckle her Child, and laid a great charge upon her not to do it. Upon which it was asked by the Court, why ſhe did give that direction, ſhe being an old Woman and not capable of giving Suck? It was anſwered by the ſaid *Dorothy Durent*, that ſhe very well knew that ſhe did not give Suck, but that for ſome years before, ſhe had gone under the Reputation of a *Witch*, which was one cauſe made her give her the caution: Another was, That it was cuſtomary with old Women, that if they did look after a ſucking Child, and nothing would pleaſe it but the Breaſt, they did uſe to pleaſe the Child to give it the Breaſt, and it did pleaſe the Child, but it

ſucked

ſucked nothing but Wind, which did the Child hurt. Nevertheleſs after the departure of this Deponent, the ſaid *Amy* did Suckle the Child: And after the return of the ſaid *Dorothy*, the ſaid *Amy* did acquaint her, *That ſhe had given Suck to the Child* contrary to her command. Whereupon the Deponent was very angry with the ſaid *Amy* for the ſame; at which the ſaid *Amy* was much diſcontented, and uſed many high Expreſſions and Threatning Speeches towards her; telling her, *That ſhe had as good to have done otherwiſe than to have found fault with her, and ſo departed out of her Houſe:* And that very Night her Son fell into ſtrange fits of ſwounding, and was held in ſuch terrible manner, that ſhe was much affrighted therewith, and ſo continued for divers weeks. And the ſaid Examinant farther ſaid, that ſhe being exceedingly troubled at her Child's Diſtemper, did go to a certain Perſon named Doctor *Jacob*, who lived at *Yarmouth*, who had the reputation in the Country, to help Children that were Bewitched; who adviſ'd her to hang up the Childs Blanket in the Chimney-corner all day, and at night when ſhe put the Child to Bed, to put it into the ſaid Blanket, and if ſhe found any thing in it, ſhe ſhould not be afraid, but to throw it into the Fire. And this Deponent did according to his direction; and at night when ſhe took down the Blanket with an intent to put her Child therein, there fell out of the ſame a great Toad, which ran up and down the Hearth, and ſhe having a young Youth only with her in the Houſe, deſired him to catch the Toad, and throw it into

into the Fire, which the Youth did accordingly, and held it there with the Tongs; and as ſoon as it was in the Fire it made a great and horrible Noiſe, and after a ſpace there was a flaſhing in the Fire like Gun-powder, making a noiſe like the diſcharge of a Piſtol, and thereupon the Toad was no more ſeen nor heard. It was asked by the Court, if that after the noiſe and flaſhing, there was not the Subſtance of the Toad to be ſeen to conſume in the Fire? And it was anſwered by the ſaid *Dorothy Durent*, that after the flaſhing and noiſe, there was no more ſeen than if there had been none there. The next day there came a young Woman, a Kinſwoman of the ſaid *Amy*, and a Neighbour of this Deponent, and told this Deponent, that her Aunt (meaning the ſaid *Amy*) was in a moſt lamentable condition, having her Face all ſcorched with Fire, and that ſhe was ſitting alone in her Houſe, in her Smock without any Fire. And thereupon this Deponent went into the Houſe of the ſaid *Amy Duny* to ſee her, and found her in the ſame condition as was related to her; for her Face, her Legs, and Thighs, which this Deponent ſaw, ſeemed very much ſcorched and burnt with Fire, at which this Deponent ſeemed much to wonder; and asked the ſaid *Amy* how ſhe came into that ſad condition? And the ſaid *Amy* replied, ſhe might thank her for it, for that ſhe this Deponent was the cauſe thereof, but that ſhe ſhould live to ſee ſome of her Children Dead, and ſhe upon Crutches. And this Deponent farther ſaith, that after the burning of the ſaid Toad, her Child recover'd, and

was

was well again, and was living at the time of the Aſſizes. And this Deponent farther ſaith, That about the *6th* of *March*, 11° *Car.* 2. her Daughter *Elizabeth Durent*, being about the Age of Ten Years, was taken in like manner as her firſt Child was, and in her fits complained much of *Amy Duny*, and ſaid, That ſhe did appear to her, and Afflict her in ſuch manner as the former. And ſhe this Deponent going to the Apothecaries for ſomething for her ſaid Child, when ſhe did return to her own Houſe, ſhe found the ſaid *Amy Duny* there, and asked her what ſhe did do there? And her anſwer was, *That ſhe came to ſee her Child, and to give it ſome Water.* But ſhe this Deponent was very angry with her, and thruſt her forth of her doors, and when ſhe was out of doors, ſhe ſaid. *You need not be ſo angry, for your Child will not live long:* And this was on a *Saturday*, and the Child dyed on the *Monday* following. The cauſe of whoſe Death this Deponent verily believeth was occaſioned by the Witchcraft of the ſaid *Amy Duny*: For that the ſaid *Amy* hath been long reputed to be a *Witch*, and a Perſon of very evil Behaviour, whoſe Kindred and Relations have been many of them accuſed for *Witchcraft*, and ſome of them have been Condemned.

The ſaid Deponent further ſaith, That not long after the death of her Daughter *Elizabeth Durent*, ſhe this Deponent was taken with a Lameneſs in both her Legs, from the Knees downward, that ſhe was fain to go upon Crutches, and that ſhe had no other uſe of them but only to bear a little upon them till ſhe did remove her Crutches,

and ſo continued till the time of the Aſſizes, that the *Witch* came to be Tryed, and was there upon her Crutches. The Court asked her, *That at the time ſhe was taken with this Lameneſs, if it were with her according to the Cuſtom of Women?* Her Anſwer was, that it was ſo, and that ſhe never had any ſtoppages of thoſe things, but when ſhe was with Child.

This is the Subſtance of her Evidence to this Indictment.

There was one thing very remarkable, that after ſhe had gone upon Crutches for upwards of Three Years, and went upon them at the time of the Aſſizes in the Court when ſhe gave her Evidence, and upon the Juries bringing in their Verdict, by which the ſaid *Amy Duny* was found Guilty, to the great admiration of all Perſons, the ſaid *Dorothy Durent* was reſtored to the uſe of her Limbs, and went home without making uſe of her Crutches.

II. As concerning *Elizabeth* and *Deborah Pacy*, the firſt of the Age of Eleven Years, the other of the Age of Nine Years or thereabouts: As to the Elder, ſhe was brought into the Court at the time of the Inſtructions given to draw up the Indictments, and afterwards at the time of Tryal of the ſaid Priſoners, but could not ſpeak one Word all the time, and for the moſt part ſhe remained as one wholly ſenſeleſs as one in a deep Sleep, and could move no part of her Body, and all the Motion of Life that appeared in her was, that as ſhe lay upon Cuſhions in the Court upon her back, her ſtomach and belly, by the drawing of her breath, would ariſe to a great height:

height: and after the ſaid *Elizabeth* had lain a long time on the Table in the Court, ſhe came a little to her ſelf and ſate up, but could neither ſee nor ſpeak, but was ſenſible of what was ſaid to her, and after a while ſhe laid her Head on the Bar of the Court with a Cuſhion under it, and her Hand and her Apron upon that, and there ſhe lay a good ſpace of time: And by the direction of the Judge, *Amy Duny* was privately brought to *Elizabeth Pacy*, and ſhe touched her hand; whereupon the Child without ſo much as ſeeing her, for her Eyes were cloſed all the while, ſuddenly leaped up, and catched *Amy Duny* by the Hand, and afterwards by the Face; and with her Nails ſcratched her till Blood came, and would by no means leave her till ſhe was taken from her, and afterwards the Child would ſtill be preſſing towards her, and making ſigns of Anger conceived againſt her.

Deborah the younger Daughter was held in ſuch extream manner, that her Parents wholly deſpaired of her life, and therefore could not bring her to the Aſſizes.

The Evidence which was given concerning these Two Children was to this Effect.

SAmuel *Pacy* a Merchant of *Leystoff* aforesaid, (a Man who carried himself with much soberness during the Tryal, from whom proceeded no words either of Passion or Malice, though his Children were so greatly Afflicted,) Sworn and Examined, Deposeth, That his younger Daughter *Deborah*, upon *Thursday* the Tenth of *October* last, was suddenly taken with a Lameness in her Legs, so that she could not stand, neither had she any strength in her Limbs to support her, and so she continued until the seventeenth Day of the same Month, which Day being fair and Sunshiny, the Child desired to be carried on the *East* part of the House, to be set upon the Bank which looketh upon the Sea; and whilst she was sitting there, *Amy Duny* came to this Deponents House to buy some Herrings, but being denied, she went away discontented, and presently returned again, and was denied, and likewise the third time, and was denied as at first; and at her last going away, she went away grumbling; but what she said was not perfectly understood. But at the very same instant of time, the said Child was taken with most violent fits, feeling most extream pain in her Stomach, like the pricking of Pins, and Shreeking out in a most dreadful manner like unto a Whelp, and not like unto a sensible Creature.

And

And in this extremity the Child continued to the great grief of the Parents until the Thirtieth of the ſame Month. During this time this Deponent ſent for one Dr. *Feavor*, a Doctor of Phyſick, to take his advice concerning his Childs Diſtemper; the Doctor being come, he ſaw the Child in thoſe fits, but could not conjecture (as he then told this Deponent, and afterwards affirmed in open Court, at this Tryal) what might be the cauſe of the Childs Affliction. And this Deponent farther ſaith, That by reaſon of the circumſtances aforeſaid, and in regard *Amy Duny* is a Woman of an ill Fame, and commonly reported to be a *Witch* and *Sorcereſs*, and for that the ſaid Child in her fits would cry out of *Amy Duny* as the cauſe of her Malady, and that ſhe did affright her with Apparitions of her Perſon (as the Child in the intervals of her fits related) he this Deponent did ſuſpect the ſaid *Amy Duny* for a *Witch*, and charged her with the injury and wrong to his Child, and cauſed her to be ſet in the Stocks on the Twenty eighth of the ſame *October*: And during the time of her continuance there, one *Alice Letteridge* and *Jane Buxton* demanding of her (as they alſo affirmed in Court upon their Oaths) what ſhould be the reaſon of Mr. *Pacy*'s Childs Diſtemper? telling her, That ſhe was ſuſpected to be the cauſe thereof; ſhe replyed, *Mr.* Pacy *keeps a great ſtir about his Child, but let him ſtay until he hath done as much by his Children, as I have done by mine.* And being further examined, what ſhe had done to her Children? She anſwered, *That ſhe had been fain to open her Childs Mouth with a Tap to give it Victuals.*

 And

And the ſaid Deponent further depoſeth, That within two Days after ſpeaking of the ſaid words, being the Thirtieth of *October*, the eldeſt Daughter *Elizabeth*, fell into extream Fits, inſomuch, that they could not open her Mouth to give her Breath, to preſerve her Life without the help of a Tap, which they were enforced to uſe; and the younger Child was in the like manner Afflicted, ſo that they uſed the ſame alſo for her Relief.

And further the ſaid Children being grievouſly afflicted would ſeverally complain in their extremity, and alſo in the intervals, That *Amy Duny* (together with one other Woman whoſe Perſon and Cloaths they deſcribed) did thus Afflict them, their Apparitions appearing before them, to their great terrour and affrightment: And ſometimes they would cry out, ſaying, *There ſtands* Amy Duny, *and there* Roſe Cullender; the other Perſon troubling them.

Their fits were various, ſometimes they would be lame on one ſide of their Bodies, ſometimes on the other: Sometimes a ſoreneſs over their whole Bodies, ſo as they could endure none to touch them: At other times they would be reſtored to the perfect uſe of their Limbs, and deprived of their Hearing; at other times of their Sight, at other times of their Speech; ſometimes by the ſpace of one day, ſometimes for two; and once they were wholly deprived of their Speech for Eight days together, and then reſtored to their Speech again. At other times they would fall into Swoonings, and upon the recovery to their Speech they would Cough extreamly, and bring up much Flegme, and with the ſame crooked

crooked Pins, and one time a Two-peny Nail with a very broad head, which Pins, (amounting to Forty or more) together with the Two-peny Nail were produced in Court, with the affirmation of the ſaid Deponent, that he was preſent when the ſaid Nail was vomited up, and alſo moſt of the Pins. Commonly at the end of every fit they would caſt up a Pin, and ſometimes they would have four or five Fits in one day.

In this manner the ſaid Children continued with this Deponent for the ſpace of two Months, during which time in their Intervals this Deponent would cauſe them to Read ſome Chapters in the *New Teſtament.* Whereupon this Deponent ſeveral times obſerved, that they would read till they came to the name of Lord, or Jeſus, or Chriſt; and then before they could pronounce either of the ſaid Words they would ſuddenly fall into their Fits. But when they came to the Name of Satan, or Devil, they would clap their Fingers upon the Book, crying out, *This bites, but makes me ſpeak right well.*

At ſuch time as they be recovered out of their Fits (occaſion'd as this Deponent conceives upon their naming of Lord, or Jeſus, or Chriſt,) this Deponent hath demanded of them, what is the cauſe they cannot pronounce theſe words? They reply and ſay, *That* Amy Duny *ſaith, I muſt not uſe that name.*

And farther, the ſaid Children after their Fits were paſt, would tell, how that *Amy Duny*, and *Roſe Cullender* would appear before them, holding their Fiſts at them, threatning, *That if they related either what they ſaw or heard,* that

that they would Torment them ten times more than ever they did before.

In their Fits they would cry out, *Their ſtands* Amy Duny, *or* Roſe Cullender; and ſometimes in one place and ſometimes in another, running with great violence to the place where they fancied them to ſtand, ſtriking at them as if they were preſent; they would appear to them ſometimes ſpinning, and ſometimes reeling, or in other poſtures, deriding or threatning them.

And this Deponent farther ſaith, That his Children being thus Tormented by all the ſpace aforeſaid, and finding no hopes of amendment, he ſent them to his Siſters Houſe, one *Margaret Arnold*, who lived at *Yarmouth*, to make tryal, whether the change of the Air might do them any good. And how, and in what manner they were afterwards held, he this Deponent refers himſelf to the Teſtimony of his ſaid Siſter.

Margaret Arnold, Sworn and Examined, ſaith, That the ſaid *Elizabeth* and *Deborah Pacy* came to her Houſe about the Thirtieth of *November* laſt; her Brother acquainted her, that he thought they were Bewitch'd, for that they vomited Pins; and farther informed her of the ſeveral paſſages which occurred at his own Houſe. This Deponent ſaid, that ſhe gave no credit to that which was related to her, conceiving poſſibly the Children might uſe ſome deceit in putting Pins in their mouths themſelves. Wherefore this Deponent unpinned all their Cloaths, and left not ſo much as one Pin upon them, but ſewed all the Cloaths they wore, inſtead of pinning of them. But this

Deponent

Deponent ſaith, that notwithſtanding all this care and circumſpection of hers, the Children afterwards raiſed at ſeveral times at leaſt Thirty Pins in her preſence, and had moſt fierce and violent Fits upon them.

The Children would in their Fits cry out againſt *Roſe Cullender* and *Amy Duny*, affirming that they ſaw them; and they threatned to torment them Ten times more, if they complained of them. At ſome times the Children (only) would ſee things run up and down the Houſe in the appearance of Mice; and one of them ſuddenly ſnapt one with the Tongs, and threw it into the Fire, and it ſcreeched out like a Rat.

At another time, the younger Child being out of her Fits went out of Doors to take a little freſh Air, and preſently a little thing like a Bee flew upon her Face, and would have gone into her Mouth, whereupon the Child ran in all haſte to the Door to get into the Houſe again, ſcreeking out in a moſt terrible manner; whereupon this Deponent made haſte to come to her, but before ſhe could get to her, the Child fell into her ſwooning Fit, and at laſt with much pain ſtraining herſelf, ſhe vomited up a Two-peny Nail with a broad Head; and after that the Child had raiſed up the Nail ſhe came to her underſtanding; and being demanded by this Deponent, how ſhe came by this Nail? ſhe anſwered, *That the Bee brought this Nail and forced it into her Mouth.*

And at other times, the Elder Child declared unto this Deponent, that during the time of her Fits, ſhe ſaw Flies come unto her, and bring with them in their Mouths crooked Pins; and

and after the Child had thus declared the ſame, ſhe fell again into violent Fits, and afterwards raiſed ſeveral Pins.

At another time, the ſaid Elder Child declared unto this Deponent, and ſitting by the Fire ſuddenly ſtarted up and ſaid, *ſhe ſaw a Mouſe*, and ſhe crept under the Table looking after it, and at length, ſhe put ſomething in her Apron, ſaying, *ſhe had caught it*; and immediately ſhe ran to the Fire and threw it in, and there did appear upon it to this Deponent, like the flaſhing of Gun-powder, though ſhe confeſſed ſhe ſaw nothing in the Childs Hand.

At another time the ſaid Child being ſpeechleſs, but otherwiſe, of perfect Underſtanding, ran round about the Houſe holding her Apron, crying, *huſh, huſh*, as if there had been ſome Poultry in the Houſe; but this Deponent could perceive nothing: But at laſt ſhe ſaw the Child ſtoop, as if ſhe had catcht at ſomething, and put it into her Apron, and afterwards made as if ſhe had thrown it into the Fire: But this Deponent could not diſcover any thing: But the Child afterwards being reſtored to her ſpeech, ſhe this Deponent demanded of her what ſhe ſaw at the time ſhe uſed ſuch a poſture? who anſwered, *That ſhe ſaw a Duck*

At another time, the Younger Daughter being recovered out of her Fits, declared, *That* Amy Duny *had been with her, and that ſhe tempted her to Drown her ſelf, and to cut her Throat, or otherwiſe to Deſtroy her ſelf.*

At another time in their Fits they both of them cryed out upon *Roſe Cullender* and *Amy Duny*, complaining againſt them; *Why do not you*

you come your selves, but send your Imps to torment us?

These several passages as most remarkable, the said Deponent did particularly set down as they daily happen'd, and for the reasons aforesaid, she doth verily believe in her Conscience, that the Children were bewitched, and by the said *Amy Duny*, and *Rose Cullender*; though at first she could hardly be induced to believe it.

As concerning *Ann Durent*, one other of the Parties, supposed to be bewitched, present in Court,

Edmund Durent her Father Sworn and Examined; said, That he also lived in the said Town of *Leystoff*, and that the said *Rose Cullender*, about the latter end of *November* last, came into this Deponents House to buy some Herrings of his Wife, but being denyed by her, the said *Rose* returned in a discontented manner; and upon the first of *December* after, his Daughter *Ann Durent* was very sorely afflicted in her Stomach, and felt great pain, like the Pricking of Pins, and then fell into swooning Fits, and after the Recovery from her Fits, she declared, *That she had seen the Apparition of the said* Rose, *who threatned to Torment her.* In this manner she continued from the first of *December*, until this present time of Tryal; having likewise vomited up divers Pins (produced here in Court.) This Maid was present in Court, but could not speak to declare her knowledge, but fell into most violent Fits when she was brought before *Rose Cullender*.

Ann Baldwin Sworn and Examined, Deposeth the same thing as touching the Bewitching of the said *Ann Durent*.

As

As concerning *Jane Bocking* who was so weak, ſhe could not be brought to the Aſſizes.

Diana Bocking Sworn and Examined, Depoſed, That ſhe lived in the ſame Town of *Leyſtoff*, and that her ſaid Daughter having been formerly afflicted with ſwooning Fits recovered well of them, and ſo continued for a certain time; and upon the firſt of *February* laſt, ſhe was taken alſo with great pain in her Stomach, like pricking with Pins; and afterwards fell into ſwooning Fits, and ſo continued till the Deponents coming to the Aſſizes, having during the ſame time taken little or no food, but daily vomited crooked Pins; and upon *Sunday* laſt raiſed Seven Pins. And whilſt her Fits were upon her ſhe would ſpread forth her Arms with her Hands open, and uſe poſtures as if ſhe catched at ſomething, and inſtantly cloſe her Hands again; which being immediately forced open, they found ſeveral Pins diverſly crooked, but could neither ſee nor perceive how or in what manner they were conveyed thither. At another time, the ſame *Jane* being in another of her Fits, talked as if ſhe were diſcourſing with ſome Perſons in the Room, (though ſhe would give no anſwer nor ſeem to take notice of any Perſon then preſent) and would in like manner caſt abroad her Arms, ſaying, *I will not have it, I will not have it*; and at laſt ſhe ſaid, *Then I will have it*, and ſo waving her Arm with her Hand open, ſhe would preſently cloſe the ſame, which inſtantly forced open, they found in it a Lath-Nail. In her Fits ſhe would frequently complain of *Roſe Cullender*, and *Amy Duny*, ſaying That

That *now ſhe ſaw* Roſe Cullender *ſtanding at the Beds-feet, and another time at the Beds-head, and ſo in other places.* At laſt ſhe was ſtricken Dumb and could not ſpeak one Word, though her Fits were not upon her, and ſo ſhe continued for ſome Days; and at laſt her Speech came to her again, and ſhe deſired her Mother to get her ſome Meat; and being demanded the reaſon why ſhe could not ſpeak in ſo long time? She anſwered, *That* Amy Duny *would not ſuffer her to ſpeak.* This Lath-Nail, and divers of the Pins were produced in Court.

As concerning *Suſan Chandler*, one other of the Parties ſuppoſed to be Bewitched and preſent in Court.

Mary Chandler Mother of the ſaid *Suſan*, Sworn and Examined, Depoſed and ſaid, That about the beginning of *February* laſt paſt, the ſaid *Roſe Cullender* and *Amy Duny* were Charged by Mr *Samuel Pacy* for Bewitching of his Daughters. And a Warrant being granted at the requeſt of the ſaid Mr *Pacy*, by Sir *Edmund Bacon* Bart. one of the Juſtices of the Peace for the County of *Suffolk*, to bring them before him, and they being brought before him were Examined, and Confeſſed nothing. He gave order that they ſhould be ſearched; whereupon this Deponent with five others were appointed to do the ſame: And coming to the Houſe of *Roſe Cullender*, they did acquaint her with what they were come about, and asked whether ſhe was contented that they ſhould ſearch her? She did not oppoſe it, whereupon they began at her Head, and ſo ſtript her naked, and in the lower part of her Belly they found a thing like a Teat of an

Inch

Inch long, they questioned her about it, and she said, *That she had got a strain by carrying of water, which caused that Excrescence.* But upon narrower search, they found in her Privy Parts three more Excrescences or Teats, but smaller than the former: This Deponent farther saith, that in the long Teat, at the end thereof there was a little hole, and it appeared unto them as if it had been lately sucked, and upon the straining of it there issued out white milky Matter.

And this Deponent farther saith, That her said Daughter (being of the Age of Eighteen Years) was then in Service in the said Town of *Leystoff*, and rising up early the next Morning to Wash, this *Rose Cullender* appeared to her, and took her by the hand, whereat she was much affrighted, and went forthwith to her Mother, (being in the same Town) and acquainted her with what she had seen; but being extreamly terrified, she fell extream sick, much grieved at her Stomach; and that Night after being in Bed with another young Woman, she suddenly scrieked out, and fell into such extream fits as if she were distracted, crying against *Rose Cullender*; saying, *she would come to bed to her.* She continued in this manner beating and wearing her self, insomuch, that this Deponent was glad to get help to attend her. In her Intervals she would declare, *That some time she saw* Rose Cullender, *at another time with a great Dog with her:* She also vomited up divers crooked Pins; and sometimes she was stricken with blindness, and at another time she was Dumb, and so she appeared to be in Court when the Tryal of the Prisoners

ners was; for ſhe was not able to ſpeak her knowledge; but being brought into the Court at the Tryal, ſhe ſuddenly fell into her Fits, and being carried out of the Court again, within the ſpace of half an hour ſhe came to her ſelf and recovered her ſpeech, and thereupon was immediately brought into the Court, and asked by the Court, whether ſhe was in Condition to take an Oath, and to give Evidence, ſhe ſaid ſhe could. But when ſhe was Sworn, and asked what ſhe could ſay againſt either of the Priſoners? before ſhe could make any anſwer, ſhe fell into her Fits, ſcreeking out in a miſerable manner, crying, *Burn her*, *Burn her*, which were all the Words ſhe could ſpeak.

Robert Chandler Father of the ſaid *Suſan* gave in the ſame Evidence, that his Wife *Mary Chandler* had given; only as to the ſearching of *Roſe Cullender* as aforeſaid.

This was the Sum and Subſtance of the Evidence which was given againſt the Priſoners concering the Bewitching of the Children before-mentioned. At the hearing this Evidence there were divers known Perſons, as Mr Serjeant *Keeling*, Mr Serjeant *Earl*, and Mr Serjeant *Barnard*, preſent. Mr Serjeant *Keeling* ſeemed much unſatisfied with it, and thought it not ſufficient to Convict the Priſoners: For admitting that the Children were in truth Bewitched, yet, ſaid he, it can never be applied to the Priſoners, upon the Imagination only of the Parties Afflicted: For if that might be allowed, no Perſon whatſoever can be in ſafety, for perhaps they might fancy another Perſon, who might altogether be Innocent in ſuch matters.

There

There was alſo Dr *Brown* of *Norwich*, a Perſon of great knowledge; who after this Evidence given, and upon view of the three Perſons in Court, was deſired to give his Opinion, what he did conceive of them: And he was clearly of Opinion, that the Perſons were bewitched; and ſaid, that in *Denmark* there had been lately a great Diſcovery of Witches, who uſed the very ſame way of Afflicting Perſons, by conveying Pins into them, and crooked as theſe Pins were, with Needles and Nails. And his Opinion was, That the Devil in ſuch caſes did work upon the Bodies of Men and Women, upon a Natural Foundation, (that is) to ſtir up, and excite ſuch Humours ſuper-abounding in their Bodies to a great exceſs, whereby he did in an extraordinary manner afflict them with ſuch Diſtempers as their Bodies were moſt ſubject to, as particularly appeared in theſe Children; for he conceived, that theſe ſwooning Fits were Natural, and nothing elſe but that they call the Mother, but only heightened to a great exceſs by the ſubtilty of the Devil, co-operating with the Malice of theſe which we term Witches, at whoſe Inſtance he doth theſe Villanies.

Beſides the Particulars above-mentioned touching the ſaid Perſons Bewitched, there were many other things objected againſt them for a further proof and manifeſtation that the ſaid Children were Bewitched.

As *Firſt*, during the time of the Tryal, there were ſome experiments made with the Perſons Afflicted, by bringing the Perſons to touch them; and it was obſerved, that when they

they were in the midſt of their Fits, to all Mens apprehenſion wholly deprived of all ſenſe and underſtanding, cloſing their Fiſts in ſuch manner, as that the ſtrongeſt Man in the Court could not force them open; yet by the leaſt touch of one of thoſe ſuppoſed Witches, *Roſe Cullender* by Name, they would ſuddenly ſhriek out opening their Hands, which accident would not happen by the touch of any other Perſon.

And leaſt they might privately ſee when they were touched by the ſaid *Roſe Cullender*, they were blinded with their own Aprons, and the touching took the ſame Effect as before.

There was an ingenious Perſon that objected, there might be a great fallacy in this experiment, and their ought not to be any ſtreſs put upon this to Convict the Parties, for the Children might counterfeit this their Diſtemper, and perceiving what was done to them, they might in ſuch manner ſuddenly alter the motion and geſture of their Bodies, on purpoſe to induce Perſons to believe that they were not natural, but wrought ſtrangely by the touch of the Priſoners.

Wherefore to avoid this ſcruple it was privately deſired by the Judge, that the Lord *Cornwallis*, Sir *Edmund Bacon*, and Mr. Serjeant *Keeling*, and ſome other Gentlemen there in Court, would attend one of the diſtempered Perſons in the farther part of the Hall, whilſt ſhe was in her Fits, and then to ſend for one of the Witches, to try what would then happen, which they did accordingly: and *Amy Duny* was conveyed from the Bar and brought to the Maid: They put an Apron before her

Eyes, and then one other Perſon touched her Hand, which produced the ſame effect as the touch of the Witch did in the Court. Whereupon the Gentlemen returned, openly proteſting, that they did believe the whole tranſaction of this buſineſs was a mere Impoſture.

This put the Court and all Perſons into a ſtand. But at length Mr *Pacy* did declare, That poſſiply the Maid might be deceived by a ſuſpition that the Witch touched her when ſhe did not. For he had obſerved divers times, that although they could not ſpeak, but were deprived of the uſe of their Tongues and Limbs, that their Underſtandings were perfect, for that they have related divers things which have been when they were in their Fits, after they were recovered out of them. This ſaying of Mr *Pacy* was found to be true afterwards, when his Daughter was fully recovered, (as ſhe afterwards was) as ſhall in due time be related: For ſhe was asked, whether ſhe did hear or underſtand any thing that was done and acted in the Court, during the time that ſhe lay as one deprived of her underſtanding? And ſhe ſaid, *ſhe did:* And by the Opinions of ſome, this experiment, (which others would have a Fallacy) was rather a confirmation that the Parties were really Bewitched. than otherwiſe: For, ſay they, it is not poſſible that any ſhould counterfeit ſuch Diſtempers, being accompanied with ſuch various Circumſtances, much leſs Children; and for ſo long time, and yet undiſcovered by their Parents and Relations: For no Man can ſuppoſe that they ſhould all conſpire together, (being out of ſeveral Families, and, as they affirm, no way related

one

one to the other, and ſcarce of familiar acquaintance) to do an Act of this nature, whereby no Benefit or Advantage could redound to any of the Parties, but a guilty Conſcience for Perjuring themſelves in taking the Lives of two poor ſimple Women away, and there appears no Malice in the Caſe. For the Priſoner themſelves did ſcarce ſo much as Object it. Wherefore, ſay they, it is very evident that the Parties were bewitched, and that when they apprehend or underſtand by any means, that the Perſons who have done them this wrong are near, or touch them; then their Spirits being more than ordinarily moved with rage and anger at them being preſent, they do uſe more violent geſtures of their Bodies, and extend forth their Hands, as deſirous to lay hold upon them; which at other times not having the ſame occaſion, the inſtance there falls not out the ſame.

2*ly*. One *John Soam* of *Leyſtoff* aforeſaid, Yeoman, a ſufficient Perſon, Depoſeth, That not long ſince, in Harveſt-time he had three Carts which brought home his Harveſt, and as they were going into the Field to load, one of the Carts wrenched the Window of *Roſe Cullenders* Houſe, whereupon ſhe came out in a great rage and threatned this Deponent for doing that wrong; and ſo they paſſed along into the Fields and loaded all the Three Carts, the other Two Carts returned ſafe home, and back again, twice loaded that Day afterwards; but as to this Cart which touched *Roſe Cullenders* Houſe, after it was loaded, it was overturned twice or thrice that Day; and after that they had loaded it again the ſecond or third time, as they

brought it thro' the Gate which leadeth out of the Field into the Town, the Cart ſtuck ſo faſt in the Gates-head, that they could not poſſibly get it through, but were inforced to cut down the Poſt of the Gate to make the Cart paſs through, although they could not perceive that the Cart did of either ſide touch the Gate-poſts. And this Deponent further ſaith, That after they had got it through the Gate-way, they did with much difficulty get it home into the Yard; but for all that they could do, they could not get the Cart near unto the place where they ſhould unload the Corn, but were fain to unload it at a great diſtance from the place, and when they began to unload they found much difficulty therein, it being ſo hard a labour that they were tired that firſt came; and when others came to aſſiſt them, their Noſes burſt forth a Bleeding: So they were fain to deſiſt and leave it until the next Morning, and then they unloaded it without any difficulty at all.

Robert Sherringham alſo Depoſeth againſt *Roſe Cullender*, That about Two Years ſince, paſſing along the Street with his Cart and Horſes, the Axletree of his Cart touched her Houſe, and broke down ſome part of it, at which ſhe was very much diſpleaſed, threatning him, that his Horſes ſhould ſuffer for it; and ſo it happen'd, for all thoſe Horſes, being Four in Number, died within a ſhort time after. Since that time he hath had great Loſſes by the ſudden dying of his other Cattle; ſo ſoon as his Sows pigged, the Pigs would leap and caper, and immediately fall down and die. Alſo, not long after, he was taken with

a Lameneſs in his Limbs that he could neither go nor ſtand for ſome Days. After all this, he was very much vexed with great Number of Lice of an extraordinary bigneſs, and altho' he many times ſhifted himſelf, yet he was not any thing the better, but would ſwarm again with them; ſo that in the Concluſion he was forc'd to burn all his Cloaths, being two Suits of Apparel, and then was clean from them.

As concerning *Amy Duny*, one *Richard Spencer* Depoſeth, That about the firſt of *September* laſt, he heard her ſay at his Houſe, *That the Devi would not let her reſt until ſhe were revenged on one* Cornelius Sandeſwell's *Wife.*

Ann Sandeſwell, Wife unto the above-ſaid *Cornelius*, Depoſed, That about Seven or Eight Years ſince, ſhe having bought a certain number of Geeſe, meeting with *Amy Duny*, ſhe told her, *If ſhe did not fetch her Geeſe home, they would all be deſtroyed:* Which in a few Days after came to paſs.

Afterwards the ſaid *Amy* became Tenant to this Deponent's Huſband for a Houſe, who told her, *That if ſhe looked not well to ſuch a Chimney in her Houſe, that the ſame would fall:* Whereupon this Deponent replyed, That it was a new one; but not minding much her Words, at that time they parted. But in a ſhort time the Chimney fell down according as the ſaid *Amy* had ſaid.

Alſo this Deponent farther ſaith, That her Brother being a Fiſherman, and uſing to go into the *Northern Seas*, ſhe deſired him to ſend her a Firkin of Fiſh, which he did accordingly; and ſhe having notice that the

ſaid Firkin was brought into *Leyſtoff-Road*, ſhe deſired a Boatman to bring it aſhore with the other Goods they were to bring; and ſhe going down to meet the Boat-man to receive her Fiſh, deſired the ſaid *Amy* to go along with her to help her home with it; *Amy* replyed, *She would go when ſhe had it.* And thereupon this Deponent went to the Shoar without her, and demanded of the Boat-man the Firkin; they told her, That they could not keep it in the Boat from falling into the Sea, and they thought it was gone to the Devil, for they never ſaw the like before. And being demanded by this Deponent, whether any Goods in the Boat were likewiſe loſt as well as hers? They anſwered, *Not any.*

This was the Subſtance of the whole Evidence given againſt the Priſoners at the Bar; who being demanded, what they had to ſay for themſelves? They replyed, *Nothing material to any thing that was proved againſt them.* Whereupon, the Judge in giving his direction to the Jury, told them, that he would not repeat the Evidence unto them, leaſt by ſo doing he ſhould wrong the Evidence on the one ſide or on the other. Only this acquainted them, That they had Two things to enquire after. *Firſt*, Whether or no theſe Children were Bewitched? *Secondly*, Whether the Priſoners at the Bar were Guilty of it?

That there were ſuch Creatures as *Witches* he made no doubt at all; For *Firſt*, the Scriptures had affirmed ſo much. *Secondly*, The wiſdom of all Nations had provided Laws againſt ſuch Perſons, which is an Argument of their confidence of ſuch a Crime. And ſuch hath been

the

the Judgment of this Kingdom, as appears by that Act of Parliament which hath proved Punishments proportionable to the quality of the Offence. And desired them, strictly to observe their Evidence; and desired the great God of Heaven to direct their Hearts in this weighty thing they had in Hand: *For to Condemn the Innocent, and to let the Guilty go free, were both an Abomination to the Lord.*

With this short Direction the Jury departed from the Bar, and within the space of half an hour returned, and brought them in both *Guilty* upon the several Indictments, which were Thirteen in Number, whereupon they stood Indicted.

This was upon *Thursday* in the Afternoon, *March* 13. 1662.

The next Morning, the Three Children with their Parents came to the Lord Chief Baron *Hales*'s Lodging, who all of them spake perfectly, and were in as good Health as ever they were; only *Susan Chandler*, by reason of her very much Affliction, did look very thin and wan. And their Friends were asked, At what time they were restored thus to their Speech and Health? And Mr. *Pacy* did affirm, that within less than half an hour after the *Witches* were Convicted, they were all of them restored, and slept well that Night, feeling no pain; only *Susan Chandler* felt a pain like pricking of Pins in her Stomach.

After, they were all of them brought down to the Court, but *Ann Durent* was so fearful to behold them, that she desired she might

not ſee them. The other Two continued in the Court, and they Affirmed in the face of the Country, and before the *Witches* themſelves, what before hath been Depoſed by their Friends and Relations; the Priſoners not much contradicting them. In Concluſion, the Judge and all the Court were fully ſatisfied with the Verdict, and thereupon gave Judgment againſt the *Witches* that they ſhould be Hanged.

They were much urged to confeſs, but would not.

That Morning we departed for *Cambridge*, but no Reprieve was granted: And they were Executed on *Monday*, the Seventeenth of *March* following; but they Confeſſed nothing.

FINIS.

A DISCOURSE TOUCHING PROVISION FOR THE POOR.

Written by
Sir *MATTHEW HALE*, Kt.
Late Lord Chief Justicc of the *King's-Bench*.

LONDON,
Printed for *D. Brown*, *J. Walthoe*, and *M. Wotton*. 1716.

THE PREFACE.

A Due Care for the Relief of the Poor is an Act, 1. *of great Piety towards Almighty God, who requires it of us: He hath left the Poor as his Pupils, and the Rich as his Stewards to provide for them: It is one of those great Tributes that he justly requires from the rest of Mankind; which, because they cannot pay to him, he hath scattered the Poor among the rest of Mankind, as his Substitutes and Receivers.*

2. *It is an Act of greatest Humanity among Men. Mercy and Benignity is due to the very Beasts that serve us, much more to*

to those that are Partakers of the same common Nature with us.

3. *It is an Act of great Civil Prudence and Political Wisdom: for Poverty in it self is apt to emasculate the Minds of Men, or at least it makes Men tumultuous and unquiet. Where there are many very Poor, the Rich cannot long or safely continue such; Necessity renders Men of Phlegmatick and dull Natures, stupid and indisciplinable; And Men of more fiery or active Constitutions, rapacious and desperate.*

At this Day it seems to me that the English *Nation is more deficient in their prudent Provision for the Poor than any other cultivated and Christian State; at least that have so many Opportunities and Advantages to supply them.*

In some other Countries a Beggar is a rare Sight; Those that are unable to maintain themselves by Age or Impotency, are relieved. And those that are able to supply their Wants by their Labour, are furnished with Imployments suitable to their Condition.

And by this Means there is not only a good and orderly Education, and a decent

Face of the Publick; but the more Populous the State or Country is, the Richer and the more Wealthy it is.

But with us in England, *for want of a due Regulation of Things, the more Populous we are, the Poorer we are; so that, that wherein the Strength and Wealth of a Kingdom consists, renders us the weaker and the poorer.*

And, which is yet worse, Poor Families which daily multiply in the Kingdom for want of a due Order for their Imployment in an honest Course of Life, whereby they may gain Subsistance for them and their Children, do unavoidably bring up their Children either in a Trade of Begging or Stealing, or such other Idle Course, which again they propagate over to their Children, and so there is a successive Multiplication of hurtful or at least unprofitable People, neither capable of Discipline nor beneficial Imployment.

It is true, we have very severe Laws against Begging, the very Giver being in some Cases subject to a Penalty by the Statute of 1 Jac. cap. 17. *But it takes little Effect. And indeed as the Case stands with us, it is no reason it should: for what*

Man

Man that is of Ability can have the Conscience to deny an Alms, or to bring a Wanderer to the Punishment directed by that Statute and the Statute of 39 Eliz. *when he cannot choose but know that there is not that due course provided, or at least used, that Persons necessitous, and able to work, may have it: Indeed were there a clear means practised for the Imploying of poor Persons, It were an uncharitable Action to relieve them in a Course of Idleness. But when I do not know that there is such a Provision, I dare not deny my Relief, because I know not whether without it he may be starved with hunger, without his own Default.*

We have also very severe Laws against Theft, possibly more severe than most other Nations, yea, and than the Offence in it self simply considered deserves; And there is little to be said in the Defense of the severity of the Law herein, but the multitude of the Offenders, and the design of the Law rather to terrify than to punish, ut metus in omnes, pœna in paucos: *But it is most apparent that the Law is frustrated of its Design therein; for although more suffer at one Sessions at* Newgate *for Stealing and Breaking up Houses, and Picking of Pockets, and such other Larcenies out of the Protection of Clergy, than suffer in*

some

ſome other Countries for all Offences in three Years, yet the Goals are never the Emptier: Neceſſity, and Poverty, and want of a due Proviſion for the Imployment of Indigent Perſons, and the Cuſtom of a looſe and Idle Life, daily ſupply with Advantage the number of thoſe who are taken off by the Sentence of the Law: And doubtleſs as the multitude of Poor, and neceſſitous, and uneducated Perſons increaſe, the multitude of Malefactors will increaſe, notwithſtanding the Examples of Severity.

So that upon the whole Account, the Prudence of Prevention, as it is more Chriſtian, ſo it will be more Effectual than the Prudence of Remedy: The Prevention of Poverty, Idleneſs and diſorderly Education, even of poor Children, would do more good to this Kingdom than all the Gibbets, and Cauterizations, and Whipping-Poſts, and Goals in this Kingdom, and would render theſe kind of Diſciplines leſs neceſſary and leſs frequent.

But hitherto I am in Generals, which rarely proſper into Action or Conviction: I therefore ſhall conſider principally theſe things:

1. *What Proviſions there are already ſetled by the Laws in force for the Relief and Imployment of the Poor.*

2 *Wherein the Defects are, in relation to those Laws or Provisions, and the Consequences thereof.*

3. *What may be thought a convenient Supply of those Defects, and the Consequences of such Supplies.*

CHAP. I.

Touching the Laws at Present in force for the Relief and Imployment of the Poor.

THE Laws relating to the Poor are of two kinds, *viz.* 1. Such as concern the relief of the Aged, and Impotent, that are not able by their Labour to maintain themselves. 2. Such as concern the imployment and setting of Work, of such as are able. And this latter, as shall be shewn, is the more comprehensive and beneficial Charity, although both are necessary and become us, both as Men and Christians; much more touching the former of these, *viz.* the relief of the impotent Poor, the Laws of *England* have provided a double Remedy. First, by giving great incouragement to voluntary Undertakings of good and liberal Minds in this kind. 2. By Compulsary means upon all.

Again, as touching the former of these, the Statute of 29 *Eliz. Cap.* 5. hath given a great Incouragement to such as shall erect Hospitals, Houses of Correction and *Maisons de Dieu*. And the Statutes of 39 *Eliz. Cap.* 6. *and* 43 *Eliz. Cap.* 4. have taken special care for the due imployment of Gifts to charitable uses. And certainly such voluntary Assignations argue an excellent and charitable Mind in those that shall so voluntarily give; And the Statutes have given a fair Incouragement to the Charities of Men in this kind. But this Provision doth but little in order to Relief: For 1. for the most part such Hospitals, extend but to a few aged Persons limited to some particular Town, unless it be in the large Hospitals, in *London*, where there is some Provision more Extensive in respect both of number and age, as St. *Thomas*'s Hospital, *Christ-Church* Hospital, and some others. 2. But besides this, those are but Voluntary, and not Compulsary; although there may be some that may be charitably minded, yet for the most part Men are backward in Works of Charity; Self-love, Covetousness, distrust of the Truth and Providence of God keeps most from overflowing Charity, or Building or Endowing Hospitals.

2. Therefore there was a Compulsary laid upon Men for the Relief of the Poor within their respective Parishes, *viz.* the Statute of 43 *Eliz. Cap.* 2. being the first Compulsary Law that I remember of that kind: And indeed it now became necessary to be done by a Compulsary Means, which before that time was left more arbitrary, because the Kingdom became then

much

much more populous than in former time, and with it the Poor alſo greatly increaſed, and beſides many of thoſe methods of their voluntary Relief was then much abated; which Statute Enables the Church-Wardens and Overſeers, &c. to do theſe things.

1. To take order for ſetting to work the Children of thoſe whoſe Parents, are not able to maintain their Children.

2. To take order to ſet thoſe to work as ſuch, having no Means to maintain themſelves, uſe no ordinary Trade. But provides not ſufficient Compulſaries to make them work.

3. To raiſe weekly by Taxation a convenient ſtock of Flax, Hemp, &c. to ſet the Poor on Work: But no Means at the firſt, before the return of the Manufacture to pay them wages in expreſs words, but is ſupplied by the latter general Clauſe. (*And to do and execute all other Things, as well for the diſpoſing of the ſaid Stock, or otherwiſe concerning the Premiſes as to them ſhall ſeem convenient.*)

4. To raiſe competent Sums of Money for the impotent Poor not able to Work.

5. Alſo for the putting of Poor Children Apprentices, but no Compulſary for any to receive them.

Among all theſe Proviſions the 4th concerns the Relief of the Poor by Taxation, and Contributions to ſuch as are impotent; the four other Particulars concern their Imployment, and of ſuch as are able to Work, which is the far greater number. And although the Relief of the Impotent Poor ſeems to be a Charity of more immediate Exigence, yet the Imployment of the Poor is a Charity of greater Extent,

 and

and of very great and important Conſequence to the publick Wealth and Peace of the Kingdom, as alſo to the Benefit and Advantage of the Poor.

I therefore come to that ſecond Buſineſs relating to the Poor, *viz.* the ſetting the Poor on Work.

The Laws that concern that Buſineſs of the *Imployment* of the Poor are of two kinds; *viz.* that which contains a Compulſary Means of providing Work for the Poor, which is the Statute of 43 *Eliz.* And ſecondly, thoſe Laws which are in ſome kind Compulſary to force Perſons to Work; and theſe are of two kinds, *viz.*

1. Thoſe that concern Children and the Binding of them Apprentices, *viz.* the Clauſe of the Statute 43 *Eliz. Cap.* 4. before-mentioned and the Statute 7 *Jac. Cap.* 1. which makes fair Proviſion for the raiſing of Money to bind them, and directs the manner of its Imployment. But as before is obſerved, hath not any ſufficient Compulſary for Perſons to take them, and perchance there might be fit to have ſome ſuch qualifications in that Compulſary which might not leave it too arbitrary in the Juſtices of Peace to compel whom they pleaſe, to take whom they pleaſe: But this is not the Buſineſs I drive at, perchance the general Proviſion which I deſign, may make this at leaſt not ſo frequently neceſſary.

2. In reference to Rogues, Vagabonds and idle and diſorderly Perſons, the Statute 7 *Jac. Cap.* 4. gives Power to the Juſtices of Peace to ſend them to the Houſe of Correction, which they are thereby required to cauſe to be

Erected.

Erected. 2. Power to the Master of such House of Correction to keep them to work.

But even in this particular there are defects. 1. It is not general for all Persons, but at most idle and disorderly Persons. 2. That description is very uncertain in reference to such Persons, and leaves the Justices either too great or too little power. 3. For want of a convenient Stock to be raised for such Houses of Correction, and advantageous ways for such work, it either leaves such as are sent without an Imployment, or renders their Imployment ungrateful in respect of the smallness of the wages, and rather makes People hate Imployment as a Hell than to entertain it as a means of a comfortable support; which though it may be well enough as a Punishment for disorderly persons that refuse to *work*, yet it is not applicable to those that are only idle, it may be, because they have no work. 4. It is a difficult thing to determine who shall be said an idle Person; it is a reasonable answer to that, they are Idle for want of such work as they are able to do, or for want of such wages as might give them a reasonable support: For there is no power given, nor is it reasonable it should, to compel Persons to set them on work, or to set them on work at convenient Wages. 5. And lastly, it is not universal; many Persons are not within that Law which would work if they might; or if they might at reasonable rates, whereby they might live. There is need, therefore, of some such provision that might be as ample as the occasion, and without which indeed all the Laws already made are either weak and ineffectual

to their Ends, and the generality of the Poor left destitute of a convenient support and provision.

CHAP. II.

Touching the Power by the Law setled for the general Provision for the Poor, and their defects.

UPon the consideration of the Statutes for the Poor, the only Statute that provides universally is that of 43 *Eliz.* which generally makes two Provisions.

1. For the Impotent Poor, that are not able to work: And it is true is a good and effectual Provision for such, if duly executed. But as I said before, the Plaister is not so large as the Sore; there are many Poor that are able to work if they had it, and had it at reasonable wages whereby they might support themselves and their Families, which oftentimes are many. These are not within the Provision of the Law, and if they come for Exhibitions, they are denyed, or at least have but very small, and such as cannot support them and their Families. And indeed if they should have sufficient Exhibition for the support of them and their Families, the Parishes where they live were not able to supply them in a proportion answerable to their necessities, or answerable to that supply which a full

fall Employment would afford them: For instance, a Poor Man and his Wife though able to work, may have four Children, two of them possibly able to work, two not able: The Father and the Mother are not able to maintain themselves and their Family in Meat, Drink, Cloathing and House-rent under ten Shillings *per* Week, and so much they might probably get if imployed: This amounts to 26.*l. per Annum*; if there were forty such Families in a great Parish, and they lived upon this Exhibition colleited by rates, it would arise to above 800*l. per Annum*, which in many Parishes exceeds the yearly Value of their Lands or Rents, yet when these Persons are kept on work thus much must be gotten by them, and without a supply Equivalent to this they must live by Begging, or Stealing, or Starve: Therefore the Second Provision is,

2. For those Poor that are able to work, and in reference to them it gives power to raise Stocks by rating the Parishioners, and setting the Poor on work.

The defects of this Provision are,

1. In the Execution of the Law already made; for let any Man look over most of the Populous Parishes in *England*; indeed there are rates made for the relief of the Impotent Poor, and it may be the same relief is also given in a narrow measure unto some others, that have great Families, and upon this they live miserably, and at best from Hand to Mouth, and if they cannot get work to make out their livelyhood, they and their Children set up a trade of Begging at best. But it is rare to see

any Provision of a Stock in any Parish for the relief of the Poor. And the reasons are principally these: 1. The Generality of People that are able, yet unwilling, to exceed the present necessary charge, they do choose to live for an hour rather than project for the future; and although possibly trebling their Exhibition in one gross sum at the beginning of the year, to raise a Stock, might in all probability render their future yearly payments for seven years together less by half or two thirds, than what must be without it, yet they had rather continue on their yearly Payments, year after year, though it exhaust them in time, and make the Poor nothing the better at the years End. 2. Because those places, where there are most Poor, consists for the most part of Trades-men, whose Estates lye principally in their Stocks, which they will not endure to be searched into to make them contributary to raise any considerable Stock for the Poor, nor indeed so much as to the ordinary Contributions: But they lay all the rates to the Poor upon the Rents of Lands and Houses, which alone, without the help of the Stocks, are not able to raise a Stock for the Poor, altho' it is very plain that Stocks are as well by Law rateable as Lands, both to the relief, and raising a Stock for the Poor: 3. Because the Church-Wardens and Overseers, to whom this power is given, are Inhabitants of the same Parish, and are either nnwilling to charge themselves or to displease their Neighbours in charging more than they needs must towards the Poor: And although it were to be wished and hoped that the Justices of Peace would

be

be forwardly to enforce them if they might, though it may concern them also in point of present profit; yet if they would do any thing herein, they are not impowered to compel the Church Wardens and Overseers to do it, who most certainly will never go about it to burden, as they think, themselves, and displease their Neighbours, unless some Compulsary power were not only lodged by Law, but also executed in some that may have a power over them to inforce it, or to do it, if they do it not, and to do it effectually, if they do it either partially, or too sparingly: 4. Because People do not consider the inconveninence that will in time grow to themselves by this neglect, and the benefit that would in a little time accrue to them by putting it in practise if they woud have but a little patience, as shall be shewn hereafter.

2. The second defect is in the Law itself; which are these:

1. No power from the Justices of Peace, or some superintendent power to compel the raising of a Stock where the Church-Wardens and Overseers neglect it.

2. The Act chargeth every Parish apart where it may be they are able to do little towards it; neither would it be so effectual as if three, four, five or more contiguous Parishes did contribute towards the raising of a Stock proportionable to their Poor respectively.

3. There is no power for hiring or erecting a Common House, or place for their common Work-house, which may be in some respects, and upon some occasions, useful and necessary, as shall be shewn.

CHAP.

CHAP. III.

The Remedy propounded.

1. THAT the Justices of the Peace at the Quarter Sessions do set out and distribute the Parishes in their several Counties into several Divisions, in each of which there may be a Work-House for the common use of the respective Divisions, wherein they are respectively placed, *viz.* one, two, three, four, five or six Parishes to a Work-House, according to the greatness or smallness, and accommodation of the several Parishes.

2. That at that Sessions the Church-Wardens and Overseers of the Poor of the respective Parishes, bring in their several rates for their Relief of their respective Poor upon Oath. And that the said Justices do assess three, four or five yearly Pays to be levied and collected at one or two entire Sums within the time prefixed by them for the raising of a Stock to set the Poor within those Precincts on Work, and to build or procure a convenient Work-House for imploying the Poor, if need be, in it, and for lodging Materials, and for instructing Children in the Trade or Work.

3. That there be yearly chose by the said Justices a Master for each Work-House, with a convenient Salary out of the said Stock, or the proceed thereof, to continue for 3 Years, and two Overseers to see the Issuing and Return of the said Stock, and to take the Accounts

Quarter-

Quarterly or Monthly of the Maſter as they ſhall think fit.

4. That the Stock be delivered to the Overſeers, and by them Iſſued to the Maſter, as there ſhall be occaſion, and that they alſo from time to time receive the proceed of the ſaid Stock and the Accompts for the ſame.

5. That at the end of every Year the Maſter and Overſeers give up their Accounts to the two next Juſtices of the Peace at times by them prefixed, and publickly notifyed to the Inhabitants of each Precinct, to the end that they may take any exceptions to ſuch Accounts, if there be cauſe.

6. That the Maſter and Overſeers of every reſpective Work-Houſe ſtand, and be incorporate by the name of Maſter and Overſeers of their reſpective Precincts, and capable to take in Succeſſion by will or otherwiſe, Lands, Goods, or Money, or other Legacies or Gifts for the Benefit of the Poor, within their reſpective Precincts.

7. That they alſo be accomptable, as well to their reſpective Succeſſours, and alſo to the Juſtices of the Peace at their Quarter Seſſions for the Benefit and Proceed and Imployment of ſuch Gifts and Bequeſts.

8. That they be diſabled to grant any Lands to them given or bequeathed for any longer term than one Year, and at an improved Rent.

9. That if any Perſon that is able to work, and not able to maintain himſelf, ſhall refuſe to do ſo, he may be forced thereunto by Warrant of two Juſtices of Peace by Impriſonment,

ment, and moderate correction in such Work-House.

10. If any Person imployed by the Master, shall imbezel or wilfully prejudice, or spoil his Work, he shall upon complaint and proof thereof by the Party grieved to any Justice of Peace, and by Warrant from him, receive Imprisonment or moderate correction by Warrant of such Justice.

These be the heads of that Provision, I could wish for the setting the Poor on Work, which is but an Essay and may receive Alterations or Additions upon consideration.

The Benefits, that would come by this Method would be very many and great: I shall set down some of them that occur to me.

1. By Incorporating of these Work-Houses, which are the best kind of Hospitals, charitable-minded Persons would have as it were a Pillar whereunto to fasten their Charity, which would prevent many Difficulties in the faithful Administrations thereof, and would invite Benefactors.

2. Whereas Hospitals provide for some few Poor Impotent People, this would prevent Poverty, and in a little tract of time bring up hundreds to be able to gain their Livelyhoods.

3. Whereas in that State that things are, our Populousness, which is the greatest Blessing a Kingdom can have, becomes the burden of the Kingdom, by breeding up whole Races and Families, and successive Generations in a mere Trade of Idleness, Thieving, and Begging, and a barbarous kind of Life, which must in time prodigiously increase and overgrow the

the whole Face of the Kingdom, and eat out the Heart of it: This course within one seven Years alters the whole State of this Disorder, and brings People and their Children after them into a Regular, Orderly and Industrious course of Life, which will be as natural to them as now Idleness, and Begging, and Thieving is.

For no Person will have need to Beg or Steal, because he may gain his living better by Working.

And no Man will be so vain, and indeed hurtful to the Publick, as to give to such as Beg, and thereby to encourage them, when he is sure they may gain their living by Working. And all the Laws against Vagrants, Beggars and Wanderers, will be then Effectually put in Execution, when we may be sure they may be imployed if they will: But till that, the interdicting and Punishiug of the Beggars and Givers seems to me a most unreasonable piece of Imprudence, as well as Uncharitableness.

4. By this means the Wealth of the Nation will be increased, Manufactures advanced, and every Body put into a capacity of Eating his own Bread; for upon what imaginable account can we think, that we should not be as able to improve our Populousness to our Wealth, as well as *Holland*, and *Flanders*, and *Barbadoes*, if we had but their Industry and orderly Management? If it be said, their Disposition is more Industrious than ours: It is true in that condition that matters are ordered; but if we had the same Industrious Education, we should have the same Industrious Disposition: Let a Man,

Man, one that hath been bred up in the trade of Begging, he will never, unless compelled, fall to Industry; and on the other side, it is a wonderful Necessity indeed that shall bring one bred up in Civility, and Industry, to Beg, as is easily observable in many poor Places and Families.

And were there no other Benefit to the Kingdom in general, nor to the particular Places, where such Work-Houses shall be settled, but this, although the Stock were wholly lost in four Years, it would be an abundant Recompence by the accustoming the poor sort to a Civil and Industrious course of Life, whereby they would soon become, not only not burthensom, but profitable to the Kingdom, and the places where they live.

5. By this Means there would soon be an Improvement of the several Manufactures of the Kingdom, both for the necessary Consumption of the Kingdom, and for Exportation; whereby our Trade Outward, would exceed our Trade Inward, which Outward Trade, as it is the Basis and Foundation of all our Trade Inward; and the excess and Overballance of our Trade Outward, to our Trade Inward, is the only Means not only to keep our Money at home, but to gain an increase of Money, and so advanceth the true intrinsick Wealth of the Kingdom; for as of our Hand, if our Trade Outward exceed our Trade Inward, the excess must of Necessity be returned in Money or Bullion, so if our Trade Inward exceed our Trade Outward, the excess must be made good from hence in Money, which must needs insensibly impoverish the Kingdom, and Experience makes us know it to be

be true: Now the Advance of our Manufactures would be by this Means plainly evident, for Woollen Manufactures or Cloath, the Staple Commodity of this Kingdom, would be more, and these other Woollen Manufactures, as Kerseys, Serges, Baize, which, though now confined to several parts of the Kingdom, as *Devonshire*, *Norfolk*, *Colchester*, would be by this Means diffused over the whole Kingdom, and those Places which have little of Woollen Manufacture; as *Linconshire*, *Northamptonshire*, and other Counties, would soon fall into it; so likewise knitting of Stockings, Caps, Wast-Coats and the like. 2. Our Linnen Manufactures, as Linnen Cloath, Laces of all sorts, Nets, Sails, *&c.* would become native, and supply the Want of the Kingdom, and prevent the necessity of Importation of Linnen Cloath from *Holland* and *France*, of Laces from *Flanders*: And as this Trade is in some degree used in *Lancashire*, *Leicestershire*, and some other Places, so it would be communicated to other Places of the Kingdom. And it is very considerable the numbers of Poor that would be by this Means imployed in dressing of Hemp and Flax, Spinning, Weaving, Whitening and the like And if any shall say, we want the Materials, and we want those that should instruct the Poor in the Ordering of them, The Answer is at hand; If once the Manufacture were begun to be put into a Method by this way, all Men would quickly sow Hemp and Flax in some Parcels of their Tillage, and possibly some Lands that were not so fit for other Tillage would be imployed in this: Two Acres of Hemp and Flax in every Parish would imploy

imploy multitudes, which now People neglect to sow, because they have no way to vent or imploy it: And for Instructors, when once the alarm is abroad of such a design it will draw over Workmen from other Foreign Parts; and by this Means we gained, or at least recovered the Skill of making Woolen Cloath from other Parts, as appearrs by undeniable Evidence. And if it shall be said that this will defraud and straiten us of Labourers in our Woollen Manufactures; there can be no fear of that; for we have Poor enough to be imployed in both, and it is most certain, that the Populousness of the Kingdom still increaseth notwithstanding its great Exhaustings by Wars and Plagues, and Foreign Plantations, and consequently the Poor will be proportionably increased, so that we may reasonably suppose that in one seven Years, by the blessing of God, the very proceeds, that will be able and fit to work, of poor Families, will be more than double to what they are now, which will continually increase in a kind of Geometrical Progression, whereby there will be enough for double the imployment that is now for them.

6. By the Means of these Work-Houses, there will be an Opportunity for One or Two Persons, skilled in any Manufacture, to instruct Twenty in the Trades, by common Resort, Meeting and dayly Residence of Children and young People there; and there may be Opportunity, to teach Children to read without any interruption, in the Imployments of them that are able to teach them, or of them that are able to work.

7. By

7. By this means the Yearly Contributions for the necessary relief of Poor, that are able to Work, and their Families, and those kind of Contributions which in time will be impossible to support the Poor, will be changed into a supply every way more easy for them that are to pay, though at first it may require a more liberal assistance for the raising of the Stocks, and every way more beneficial and advantageous for the Poor; First, because they will hereby be educated and inured to a way of Civility and Industry. 2. They will gain a Trade, which will go along with them as the constant support of their lives. 3. The Wages that they will gain, will be a greater and better support than they can have by any Contributions that are able to be assessed for them; for they may be able to gain, Two, Three, Four, Five and Six Shillings a Week, for every Person able to Work, which is five times more than their Weekly or Yearly Contributions do or can amount unto, without exhausting more than the Revenues of the Parishes, wherein these poor are in many places: And this shall be demonstrated to the Eye of any that will consider this instance, which I have exactly tryed, and examined, and found to be true.

The ordinary Process and *time, and charge of* making *a common Course medly Cloath* of our *Gloucestershire* Wool at this day is;

1. In every such Cloath of about 32 Yards long, there is Ninety Pounds of Wool, which will cost at this day at 12*d. per Pound*, four Pounds 10 *s*, *viz.* ordinary in a Grey Cloath.

54 *l.* of Abb. 34 *l.* of Warp. 2 *l.* of Mixture.	4 *l.* 10 *s.*

2. The Charge of making this Cloath:

		l.	*s.*	*d.*
1	Parting and Picking.	0	3	0
2	Colouring	0	16	0
3	Breaking and Spinning the Abb, at two pence farthing *per l.*	1	7	9
4	Breaking and Spinning the Warp, at 5*d. per. l.*	0	18	6
5	Cards and Oyl	1	0	0
6	Weaving, Spooling and Warping	1	1	3
7	Milling and Burling	0	12	0
8	Shearing and Dressing	0	18	0
9	Drawing	0	1	6
10	Carriage and Facturage.	0	7	0

So the whole Charges comes to 11 *l.* 15 *s.*

Out of which deducting the Materials of Wool, and Cards, and Oil, *viz.* 5 *l.* 10 *s.*

Their remains entirely for the Expence of work amount to 6 *l.* 5 *s.*

It is true at this day this Cloath yields not above 12 *l.* to be sold, which is only 5 *s.* profit, but when Trade is quicker it may yield 13 *l.* or more.

3. The People that are imployed in bringing about this Cloath to be ready are 14, *viz.* three Weavers and Spoolers, two Breakers, six Spinners, one Fuller and Burler, one Sheerman, one Parter and Picker: The Weavers supply the Office of Spooler and Warper.

4. These will bring about the first Cloath in about two Months space: But being continued in a constant tract, the Cloath will be brought about in three Weeks time, for all the other

other Workmen are at Work and fit the Cloath for the Weaver in that ſpace that he is Weaving the firſt Cloath.

5. Conſequently this one Loom thus imployed all the Year round, allowing two Months to the firſt Cloath, and three Weeks to every other, will make fourteen returns the firſt Year of Cloath ready for ſale, and ſixteen returns every Year after.

6. Conſequently that which this yields for bare Wages to theſe 14 poor Workmen for the firſt Year, is Eighty ſeven Pounds Ten Shillings, and for the following Years, is Ninety ſeven Pounds; and by this Computation it is eaſy to ſee what every Workman can gain a Week being full imployed.

7. About one Hundred Pounds Stock will for ever keep this Looms work going, and maintain theſe fourteen Workmen, and conſequently a Stock of four Hundred Pounds will keep on foot four Looms work, and keep on Work fifty ſix Perſons, and be able to abide the ordinary delays of ſale incident to the Markets.

8. But if it could be ſuppoſed that the Cloath could be ſold as ſoon as made (which is not I confeſs reaſonably to be expected) then a Stock of four and twenty Pounds would by its continual return provide Materials, and pay the Workmen for one Looms work in perpetuity: But becauſe the returns by ſale cannot be as ſpeedy as the work is done, the Stock muſt be near 100 *l.* to abide

the delay of a Month, two, three, four or more, in point of ſale, and likewiſe to buy Wool ſeaſonably for Work. And by this it appears, that although one Hundred Pounds Stock by its 16 returns yields but an inconſiderable advantage to the Maſter at five Shillings *per* Cloath, *viz.* but four Pounds in the Year, yet it yields a conſiderable advantage to the poor Workers, *viz.* near one Hundred Pounds *per Annum*; and conſequently a Stock of four Hundred Pounds yields near four Hundred Pounds *per Annum.* And conſequently theſe fifty ſix poor People that are kept on work with this Stock of four Hundred Pounds could not live better, if the Pariſh were at the Yearly Penſion of four Hundred Pounds *per Annum*, to relieve them, nor indeed ſo well, conſidering they are by this means kept in a way of imployment and honeſt induſtry: And yet without ſome ſupply, either by Wages or Contribution, thoſe fifty ſix poor People being deſtitute of Wages or Contributions to this Value or near it, muſt live by Stealing or Begging, or Starve.

And let it be alſo conſidered, that this Stock thus raiſed and ſet going maintains it ſelf by a perpetual circulation and viciſſitude, without any conſiderable help by any farther ſupply, and yet perpetually countervails a Contribution of near four Hundred Pounds *per Annum* for the relief of theſe fifty ſix poor Perſons.

By all which it will appear, that the advantage of a Stock imployed, and once ſet

on foot, doth countervail a great Contribution, and indeed greater than can be raiſed and Yearly continued by moſt places, and will at leaſt in time render thoſe Yearly conſtant Contributions lower and leſs needful.

9. But yet farther, by this means there will be a reaſonable Gage ſet to Wages of Workmen. It is not unknown how that ſome Covetous Maſters in hard times, if they are well ſtocked and of Abilities, will ſet on Work many Poor, but they muſt take ſuch Wages as they are not able to live upon, and that alſo many times paid in Corn, Wool, Cheeſe, and other things at rates high enough: And indeed if they will Work upon theſe terms, they may; but if not, they turn them off, or not imploy them, and thereupon the poor Workmen, not being able to live without Work, and having no place to reſort for any, are under a neceſſity of Working to them at inconſiderable rates. And ſuch Maſters make greater advantage by this means when Trade is low, than when it is open. But by this means there would be a refuge for the Poor to be imployed at reaſonable Wages; and the reaſon is evident, becauſe this being but an Expedient, not ſo much for gain to the Maſter as for Imployment for the Poor, as long as the Stock makes but good it ſelf, or be managed without conſiderable loſs, it attains its End, and therefore may give competent Wages. But on the other Hand, the Trading-Maſter looks for his profit, and if his Stock turns not to him for gain, he gives over, or reduceth the Workman to inconſiderable

Wages, that his own gain may be the greater. And although it may be there be some honest minded and Charitable Masters that will be content for some time to imploy their Stock though without gain, yet they are but rare to be found, and such as commonly hold not out long unless they find profit, though perchance they suffer no loss.

These be some of those Considerations that shew the usefulness of this Expedient: I shall now consider some of the *Objections* that may be made against it.

1. *Obj.* It is a great business to raise for the purpose four Years pay at once to make up a Stock, and Yearly Contributions are more easy.

I answer, It is true, and yet the advantage even to the Objecters themselves is even to their sense apparently great: If a Man had a Rent of Inheritance issuing out of his Land, he would not think much of giving sixteen Years purchase to buy it in: And the charge that goes out for the Poor, as it is as much and as certain a Charge as a Rent, so it is evident to us that it hath increased Yearly, and of necessity the longer things are continued in this careless way, it must increase in an Excessive Proportion, and to give four Years purchase to abate it, or if it were but to keep it at a Stay, were good Husbandry. 2. Besides this, let a Man consider what other losses do accrue by the want of a due Provision of Work, and an Industrious Education

for the Poor, in thieving and ſtealing, and ending ſuch Malefactors to Goals at the charges of the Pariſh, in Proſecuting them at Aſſiſes and Seſſions, in cutting and deſtroying of Woods, pulling of Hedges, and treſpaſſes to Corn and Graſs thereby, in Almsgiving at the door; theſe would be, if not altogether prevented, yet, in a great meaſure, they would, when that moſt unchriſtian and indeed inhumane way of Living among moſt ordinary indigent People is remedied by convenient Imployment and Wages.

2. *Obj.* But there are a ſort of Idle People, that will rather beg than work, tho' they may be imployed, and ſo that trade of Begging and Idleneſs would be ſtill continued.

I Anſwer, 1. That we do ſurmiſe a Compulſary Law to inforce Idle Perſons to work, which would prevent it. 2. By this means the Benefit of Working would exceed the Benefit of Begging, which would cauſe Perſons to leave it. 3. By the Educating of Children in a way of Induſtry there would be gradually a Diſaccuſtomedneſs to that way, which would in time quite remove it. But 4. when Men were once aſſured by a clear Evidence that the Poor might have Work upon reaſonable terms, no Man would give; the Laws againſt Wanderers that were able to work, and againſt the relievers of ſuch, would be cheerfully put in Execution, which now Men even upon the account of common Charity cannot bring themſelves to.

3. *Obj.* But what considerable advantage would such a Stock as four hundred Pounds do, when perchance in a time of trading four or five thousand Pounds imloyed by Masters in a Parish is but enough to set their Poor on Work, where it may be there are two or three hundred Persons that are thus imployed.

I answer, It would be a great help to the Poor in a time of scarcity of VVork, although it should lye still in a time of plenty of Work. The supply of Work, for a Month, or two, or three, in a Year, when Traders for Advantage give over, keeps Industry on the Wheels, and yields a considerable supply. 2. In good times, when there is no need of it, it is as capable of Increase and Improvement, being imployed as private Mens Stocks are, which would inlarge it, or at least inable it to bear some loss in times of lowness of Trade. 3. If once such a Stock were going, it would not only increase by it self, but it would have continual accession by Charitable Gifts, which would do five times the good thus imployed, than imployed as they are in Doles and little yearly Pensions, which consume and come to nothing, but are swallowed up in the present necessity of the Poor, and leave but small signs of advantage behind them: Whereas the following of the Method now propounded, will at least leave the Persons, to whom it is applyed, the Advantage of an Industrious Education and Profession, which will abide by them.

4. *Obj.*

4. *Obj.* But Men, that are concerned for their own Benefit in the proſecution of their Trade, as for inſtance of Cloathing, and conſequently more careful than Perſons imployed for others, yet do loſe by their Trading, and many times impair their Stocks; and therefore this, that cannot be expected to be neither ſo induſtriouſly nor ſucceſsfully managed, may be in the ſame condition.

I Anſwer. 1. in general. In this way there muſt needs be one of theſe Events:

1. Either there will be *Gain*, and then it doth improve the Stock, and lays up an Advantage that may compenſate a former loſs and enable the bearing of a future loſs. And I know no reaſon but that in this management there may be ſome times at leaſt of Advantage as well as in private Trading. The times are not always at a ſtand in Trade, but ſome times, and moſt ordinarily there is ſome gains in it, though not ſo much as at other times; and then the good times make amends for the bad.

2. Or elſe, though there be *no Gain*, there will be no Loſs, but it ſtands at a ſtay, and if it doth ſo this Deſign attains its End, which is the Imployment of the Poor. Tho' it yields not the Maſter or Trader any gain, yet it yields the Poor a ſubſiſtence in their Wages and Work. It is true a private Tradeſman looks to gain ſo much as may at leaſt maintain himſelf and his Family. And if he doth not, he gives over his Trading, as not anſwering

ing his end; and it may be in some cases reasonable to do so: But though here be little or no gain, yet the End is attained, because the Poor are imployed and paid, though the Stock increase not.

3. Or else there *is Loss.* To this I say; 1. If there be Loss, yet it is but gradual, not altogether. Suppose it be twenty, thirty, or forty Pounds in a Year, in a Stock of four hundred Pounds, and by that account, yet this Stock will not be wholly exhausted in five or six Years; and if it should be so, yet the Loss to the Parish would not be more than it would be of its old course of contribution at the heighth that it would have been during the spending of that Stock which is thereby, as before is observed, in a great measure remedied. 2. These decays may possible be repaired by Charitable Gifts and Bequests. 3. But if it were not, yet such gradual decays may be supplied by the Parishes with the same Ease that their Contribution would have been, all things considered, and possibly better times of Trade may happen at least once in two or three Years, which may repair the loss, or at least keep the Stock at its full gage with small helps. 4. But suppose the worst, and that in the Compass of three or four Years the whole Stock were wholly drawn dry; I say confidently, that the Advantage the Country would have by a course of industrious Education of the Poor continued but one three or four Years, will more than countervail the loss of a very considerable Stock, in preventing that Trade of Idleness

which

which grows up in Poor Families, which will daily infinitely increaſe, and will receive a very great check, and poſſibly ſuch as will for ever prevent the return of ſuch a courſe of Life by the interruption of a tract of three or four Years of Imployment, and will put thouſands in that tract of time into a courſe of trade and livelyhood, which they will carry with them all their lives after. 5. And beſides all this, it is not likely the trade will ſuffer a perpetual interruption, but even while this Stock is in this wane and declination, private Men will be trading, and then in this decay and declination of the Stock (if it ſhould be unſupplyed) there will be work at private Hands, and Perſons inſtructed and fitted and able to do it, which may prevent a total interruption of an induſtrious Education, and may give ſome intervals of relaxation of the Imployment of the common Stock, at leaſt in that fullneſs as formerly, till it be recruited by new ſupplies. 6. But yet farther, the Method of the propoſed Imployment, though it be principally bottomed upon the trade of Woolen Cloathing, yet it will have other ſupplies, as is propounded, as making of Kerſyes, Baize, Knitting of Stockings, dreſſing and ordering of Hemp and Flax, and Spinning and Weaving it. And though there were no other but the Woollen Manufacture, yet if it ſhould pleaſe our Superiors to interdict the Wearing of foreign Manufactures, our own conſumption at home, and the neceſſity that they have in foreign parts of our Woollen Manufactures, would double the Trade of Woollen Manufactures.

5. *Obj.*

5. *Obj.* The Poor have Work already if they will work, and the setting up of such a publick Trade will but make Workmen the more independent, and decline the Imlpoyment of private Traders, which will tend to the decay of Trade.

I Answer. 1. It is true when Trading is quick, possibly they may have Work enough, but upon any check in Trade they are oftentimes turned off, unless they will work at extream low Wages and ill paid. 2. When work is so plenteous at private Hands, there may be an intermission or relaxation of the Imployment of the common Stock: Especially if they can have better Wages at private Hands; for it will be enough for this to be supplemental of the defects of work at others Hands, and it sufficiently attains its End if it may be a refuge at the time of need for those that would work and cannot get it, and an Expedient to enforce those to work that can and will not.

6. *Objection.* Poor that do their work well, and are honest, and industrious, cannot want work when any is to be had in the Country, and those that are not imployed, are either such as will not work, or cannot tell how to work, or will steal and purloin the Work: These will undo the Work-House.

I answer 1, Some times there are when the honestest Workmen cannot get Work, and this will be a reserve for them. 2. But as for others, here will be an Expedient to teach them to work that cannot, and to compell them

them to work, that can, and to puniſh them, that are Diſhoneſt in their Work. 3. And if there were no puniſhment, yet when a Work-Houſe and Stock is once ſettled, that would be ſufficient to make them work: For when every Man were once ſure that they that would honeſtly Work might have it, and reaſonable Wages, every Wanderer and Beggar would be eſteemed ſuch a perſon as will not work, or will be diſhoneſt in it, and not fit to be relieved, but the Laws to be ſeverely put in Execution againſt them.

7. *Obj.* But where ſhall we have Men that will undertake the imployment, and be faithful and truſty in it?

I anſwer. 1. There be many poor and honeſt Men, who for a ſmall Salary and a Room or two to work and lodge in the Work-Houſe, would be fit enough to undertake the Imployment of a Maſter, and yet he would have no great truſt upon him; for the Stock would be lodged in the Hands of the Overſeers, and they to deliver it out, and take Weekly or Monthly Accounts: Which Overſeers may be ſubſtantial Men, and at no great trouble, and elegible either by the Juſtices of Peace, or Pariſhioners, yearly, or once in three Years, and their trouble would be no greater than the trouble of Overſeers of the Poor, or Churchwardens in any Pariſh.

And thus I have haſtily and curſorily gone through the Methods, Reaſons and Objections

tions of this Proposal, which I am sure, if it can be brought to a due accomplishment, is,

1. A Work of great Humanity, and such as we owe to those of our own Nature as we are Men. The wise God did tell his ancient People, that the Poor should be always among them; which was, 1. To exercise their Liberality and Charity in supplying the wants of some by the abundance of others. And 2. To exercise their discretion and industry, to think of and set on foot such means as might put them in a course of honest Imployment, and encourage them in it. They that are Rich are Stewards of their Wealth, and they that are wise are Stewards of their Wisdom, unto that great Master of the Family of Heaven and Earth, to whom they must give an account of both; and one, I am sure, of the best accounts they can give of both, is to imploy them in the Reformation and Relief of those that want both or either. *Am I my Brother's Keeper*, was the answer of one of the worst of M n.

2. A Work that as well becomes a Christian as any, Christianity recommending Charity, as one of the principal Christian Virtues. And indeed the ill Provision for the Poor in *England*, is one of the greatest reproaches to us in relation to our Christian Profession.

3. A Work for a good *English* Man. The want of a due Provision for Education and

Relief

Relief of the Poor in a way of Induſtry, is that which fills the Goals with Malefactors, and fills the Kingdom with idle and unprofitable Perſons that conſume the Stock of the Kingdom without improving it, and that will daily increaſe even to a deſolation in time. And this Error in the firſt Concoction, is never remediable but by Gibbets and Whipping. But there muſt be a ſound, prudent and reſolved Method for an Induſtrious Education of the Poor, and that will give better Remedy againſt theſe Corruptions than the after-gain of Penalties can.

F I N I S.

BOOKS *Printed for* D. Brown, J. Walthoe, *and* M. Wotton.

CONTEMPLATIONS Moral and Divine. In three Parts. By Sir *Mathew Hale*, Knight, late Chief Justice of the *Kings Bench.* To which is added the Life of the Author. Written by the Reverend Father in God *Gilbert* late Lord Bishop of *Sarum.*

The Law of Errors and Writs of Errors. Being a Treatise wherein is contain'd, the Nature and End of the Writ of Error: The several Sorts of Writs of Error, wherein, and when a Writ of Error is a Supersedeas, or not. Errors in Law, and Errors in Fact. How, and when Errors are to be assign'd, and by whom, and what things are assign'd for Error, of Bail in Error according to the Statute; what shall be said a Prosecution with Effect, or not. Upon what Judgment Error lies not; in what Courts Error to be brought, and within what Time. Of Errors in the Exchequer Chamber, and to what Actions the Statute extends, and to what not; Errors of Judgments in Inferiour Courts under several Titles; Errors to Reverse Outlawries, Fines and Recoveries. Of Reversing Judgments In *Wales* and in *Ireland* by Writ of Error. Of Joynder in Error. Together with the Pleadings, and how an Erroneous Judgment may be avoided by Plea, or not. What things may be Pleaded in Bar of Error. How many ways Errors may be Aided. How, and when the Record shall be said to be removed, of Diminution. The several Statutes of Feefalls, and to what they do not extend; and how Errors in Parliament may be brought, and the Effect thereof: With other useful Cases relating to Errors. Price 4*s.* 6*d.*

Lex Vadiorum, the Law of Mortgages; wherein is treated the Nature of Mortgages, and the several Sorts of Proviso's in the same Deed, or by Deed absolute, Defearazce, Demise and Redemise, or by Covenant, and otherwise: With Special Clauses, Conditions, and Covenants; Explained and Illustrated by many Adjudg'd Cases at Common-Law, and by Preeedents. Likewise of the Payments of the Mortgage Money, by whom and to whom; and several Cases and Rules of Tender. Also of Assignments of Mortgages; and the manner of Assignees Transferring, Accounting, *&c.* With proper and well-penn'd Precedents, according to the Circumstances of Cases: And further, of the Equity of Redeption, and the Nature of it, and how it is govern'd by the Rules of Equity; and of Releases of Equity of Redemption, and how transferrable or extinguishable; with the Niceties of buying in Precedent Incumberances; and several other Matters and Cases adjudged in the High Court of Chancery, (with Presidents of Bills, Answers, Pleas) *&c.* To which are added several Cases of Pawns and Pledges adjudg'd at Common Law. Price 3*s.* 6*d.*

A Catalogue of BOOKS *Printed for, and Sold by* J. PEMBERTON, *at the* Buck *and* Sun *against St.* Dunstan'*s Church in* Fleet-street. 1715.

FOLIO.

1. THE Works of the most Reverend Dr. *John Tillotson*, late Lord Archbishop of *Canterbury*: Containing Two Hundred and Fifty four Sermons and Discourses on several Occasions. Together with his Rule of Faith. As also Prayers composed by him for the Use of King *William*; A Discourse to his Servants before the Sacrament, *&c.* In Three Volumes; with Useful *Indexes*. *Price* 3 *l.*

2. Bishop *Taylor*'s Life of Christ; with Dr. *Cave*'s Lives of the Apostles. 1 *l.* 5 *s.*

3. A New Book of Declarations, Pleadings, Verdicts, Judgments, and Judicial Writs; with the Entries thereupon. By the late Mr. *H. Clift.* 1 *l.* 5 *s.*

4. *Siderfin*'s Reports compleat, in Two Parts. The 2d. Edition; with the Addition of several Thousand new References. 1 *l.* 2 *s.* 6 *d.*

5. Sir *Bulstrode Whitlocke*'s History of *England*, from the supposed Expedition of *Brute* into that Island, to the End of the Reign of K. *James* I. With a *Preface* by *James Welwood*, M. D.

OCTAVO.

1. Dr. *Sherlock*'s Practical Discourse concerning Death. 15th Edit. 3 *s.* 6 *d.*

2.------His Practical Discourse concerning a Future Judgment. 5th Edit. 4 *s.*

3.------His Discourse concerning the Divine Providence. 4th Edit. 5 *s.*

4.----His

4.------His Sermons upon Useful Subjects. Two Volumes; 2d Edit. 10 *s.*

5.------His Discourse concerning the Happiness of Good Men, and the Punishment of the Wicked, in the next World, *&c.* 2d Edit. 5 *s.*

6. The whole Works of Monsieur *De La Bruyere*, in Two Volumes. Revis'd by the last *Paris* Edition. To which is added, an Original Chapter, of the Manner of Living with Great Men. By *N. Rowe*, Esq; 9 *s.*

7. The Antiquities of St. *Peter*'s, or the Abbey-Church of *Westminster*; continued down to the Death of the late Queen: Containing all the Inscriptions, Epitaphs, *&c.* upon the Tombs and Gravestones; with Draughts of the Monuments curiously engraven. 7 *s.* 6 *d.*

8. A Compleat History of Addresses, from their first Original under *Oliver Cromwell*, to the Year 1712. In Two Volumes. 8 *s.*

9. Original Poems and Translations, by the most Eminent Hands; *viz.* Sir *Samuel Garth*, *A. Manwaring*, Esq; Mr. *Prior*, Mr. *Rowe*, Mr. *Hughes*, &c. To which is added, *Æsculapius*, or, The Hospital of Fools. A Dialogue. By the late *W. Walsh*, Esq; 2d Edit. 4 *s.*

10 A Second Tale of a Tub; or, The History of *Robert Powel* the Puppet-show Man: With his *Effigies* curiously engraven. By *T. Burnet*, Esq; 3 *s.* 6 *d.*

11. The History of the Treaty of *Utretcht*: In which is contain'd all the Acts, Memorials, Representations, Offers, Demands, Letters, Speeches, and the Treaties of Peace and Commerce between *Great-Britain* and *France.* 2d Edit. 6 *s.*

12. The Works of Dr. *Archibald Pitcairn*: Wherein are discover'd the true Foundation and Principles of the Art of Physick; with Cases, and Observations upon most Distempers and Medicines, *&c.* 5 *s.*

13. The Lives and Characters of the most Illustrious Persons, *British* and Foreign, who died in the Years

Years 1711, and 1712. More particularly, the Emperor *Joseph*; the Dukes of *Rutland*, *Bedford*, &c. the Earls of *Rochester*, *Bath*, &c. the Lords *Mohun*, *Craven*, &c. In Two Volumes. 12 *s.*

14. Memoirs, Letters and Negotiations, of the Count *D' Estrades*, Ambassador from *Lewis* XIV. to the *States-General*, from 1663, to 1669. In Three Volumes. 18 *s.*

15. The History of the *Pontificate*, from its Supposed Beginning, to the End of the Council of *Trent*, *A. D.* 1563. By *Laurence Howel*, A. M. 6 *s.*

16. Memoirs of the *British* Fleets and Squadrons in the *Mediterranean*, *An.* 1708, and 1709. With an Account of the Reduction of *Sardinia*, *Minorca*, &c. 3 *s.*

17. The True *Amazons*; or, The Monarchy of Bees. Being a New Discovery and Improvement of those Wonderful Creatures. By *Joseph Warder*, Physician. 1 *s.* 6 *d.*

18. The Adventures of *Rivella*; or, The History of the Author of the Four Volumes of the New *Atalantis*. With Secret Memoirs and Manners of several Considerable Persons, her Cotemporaries. With a Compleat Key. 2 *s.*

19. The History of the most Serene House of *Brunswick-Lunenburgh*, in all the Branches thereof, from its Origin to the Death of Queen *Anne*: Containing the Illustrious Actions of those Princes, both in Peace and War. With many Curious Memoirs, concerning the Suceession of that Family to the Crown of *Great-Britain*. With a Description of His Present Majesty's Dominions in *Germany*. 6 *s.*

20. The Works and Life of the Right Honourable *Charles* Earl of *Halifax*. Including the History of his Lordship's Times. 5 *s.*

21. The History of the most Remarkable Trials in *Great-Britain* and *Ireland*, in Capital Cases; *viz.* Heresy, Treason, Felony, Witchcraft, Incest, Poisoning, Adultery, Murder, Rapes, *&c.* both by the

unusual

unuſual Methods of Ordeal, Combat, and Attainder, and by the Eccleſiaſtical, Civil, and Common Law of theſe Realms. Extracted from Records, and other Authentick Authorities. 6 *s.*

22. The Secret Hiſtory of *Europe*, in Four Parts Compleat: Conſiſting of the moſt Private Affairs, tranſacted by all Parties for Fifty Years paſt. Extracted from the moſt Authentick Memoirs, as well Printed as Manuſcript. With a large *Appendix*; containing Original Papers, Speeches, and the Proceedings upon the Earl of *Danby*'s Impeachment. An Account of the Earl of *Clarendon*'s Impeachment; with the Reſolutions in Parliament againſt him after his Flight. Sir *John Fenwick*'s Attainder, *&c.* 13 *s.*

23. The Hiſtory of the moſt Noble Order of the Garter, and the ſeveral Orders of Knighthood extant in *Europe*. Containing, I. The Antiquity of the Town, Caſtle, Chapel, and College of *Windſor*; with their ſeveral Officers: The Foundation of the Order by K. *Edward* III. The Statutes and Annals at large, as they have been alter'd and amended. II. The Habits, Enſigns, and Officers of the Order: The Ceremonies of Election, Inveſtiture, and Inſtalment of Knights; the Manner of their Feaſts; and the Duties and Fees payable upon thoſe Occaſions. Some Account of the Founders. With an exact Liſt of all that have been Inſtalled ſince the Inſtitution; and their ſeveral Coats of Arms emblazon'd. Written at the Command of King *Charles* II. by *Elias Aſhmole*, Eſq; *Windſor*-Herald. Now compar'd with the Author's Corrections, in his Library at *Oxford*: Faithfully digeſted, and continued down to the preſent Time. The whole illuſtrated with proper Sculptures. *Small Paper*, 7 s. 6 d. *Large* 12 s.

24. The Secret Hiſtory of the *Late Miniſtry*, from their Admiſſion, to the Death of the Queen: Shewing that every Step taken by them, tended demonſtrably to bring in the *Pretender*. 6 *s.*

25. The

25. The Grammar of *Heraldry*, or Gentleman's *Vade Mecum*; serving the Purpose of all Larger Volumes. Containing, 1. The Rules of Blazon and Marshalling. 2. The Arms of the Sovereign, of the Cities, Colleges, Corporations, Companies, and other *British Societies*. 3. The Paternal Coats of the *English* and *Welch* Nobility, Clergy and Gentry; with many of the Ancient Families of *Scotland* and *Ireland*. 4. The Arms of *English* Families now extinct; with some Rare Bearings now in *Foreign Nations*. The whole digested in an Alphabetical Order. 6 *s.*

26. The Adventures of *Telemachus*, the Son of *Ulysses*. In Ten Books. With the Adventures of *Aristonous*. Written by the Archbishop of *Cambray*: Done from the New *French* Edition, by Mr. *Ozell*. Adorn'd with Twelve Cuts, and a Map of *Telemachus*'s Travels: All curiously engraven by Mr. *Vandergucht*. In Two Volumes. 6 *s.*

27. The Works of the Celebrated Monsieur *Voiture*: Containing, 1. His *Letters* and *Characters* of the most Eminent Personages in the Court of *France*. Illustrated with Explanatory Notes, by M. *Richelet*. 2. His *Metamorphoses*. 3. *Alcidalis* and *Zelida*; or, The *Undaunted Lady*: A Romance, composed for the Entertainment of Madamoiselle *de Rambouillet*. Done from the *Paris* Edition, by Mr. *Ozell*. To which is prefix'd, the Author's Life; and a Character of his Writings, by Mr. *Pope*. In Two Volumes. 6 *s.*

28. The Works of Mr. *William Shakespear* compleat, in Nine Volumes, adorn'd with Cuts. To the Last Volume (which may be had alone) is prefix'd, 1. An Essay upon the Art, Rise and Progress of the *Stage*, in *Greece*, *Rome*, and *England*. 2. Observations upon the most Sublime Passages in this Author. 3. A Glossary, explaining the Antiquated Words made use of throughout his Works. *The Price of the whole*, 1 l. 7 s. *and of that Volume single*, 3 s.

29. The

29. The *Lay-Monastery*: Consisting of Essays, Discourses, *&c.* Publish'd singly under the Title of the *Lay-Monk.* Being the Sequel of the *Spectators.* 2 *s.* 6 *d.*

30. A Preservative against *Popery.* In Two Parts. 1. Some plain Directions how to dispute with *Romish Priests.* 2. Shewing how contrary *Popery* is to the True Ends of the Christian Religion. Both fitted for the Instruction of Unlearned *Protestants.* By *William Sherlock*, D. D. Late Dean of St. *Paul's.* 2 *s.*

31. Directions to *Church-Wardens*, for the faithful Discharge of their Office. The Third Edition, with large Additions. By *Humphrey Prideaux*, D. D. Dean of *Norwich*, and Archdeacon of *Suffolk.* 1 *s.* 6 *d.*

32. Mr. *Kettlewell's* Measures of Christian Obedience, compendiously methodized, and suited to the meanest Capacity. Being a Resolution of this Grand Question; *What it is that the Gospel requires of every Christian, as indispensibly necessary to his Salvation?* Designed for the Promotion of Piety, and the Peace of Troubled Consciences. The Second Edition. To which is added, Mr. *Kettlewell's* Confession of Faith, made by him at Receiving the Holy Sacrament, a few Days before his Death. 2 *s.*

33. *English* Particles *Latinized*: Or, A Compendious Improvement of the Doctrine of *English* and *Latin* Particles. Deliver'd familiarly and plainly, by way of Question and Answer. For the Use of *Schools.* Revis'd and Corrected by Mr. *Thomas Dyche.* 2 *s.*

34. The Lawyer's Library: A New Book of Instruments; consisting of Precedents fitted for the Use of Attorneys, Ecclesiastical Persons, Scriveners, Merchants, Sollicitors, Owners of Ships, Mariners, and generally for all Persons concern'd in Trade and Commerce. Being the most Compleat Collection (of its Bulk and Nature) hitherto extant. 3 *s.* 6 *d.*

35. Dr. *Radcliffe*'s Life and Letters. Containing, 1. *Obadiah Walker*'s Letter, advising him to turn *Papist*. 2. Dr. *Radcliffe*'s Answer. 3. His Letters to the Bishop of *Norwich*, the Bishop of *Rochester*, the Lord *Craven*, the Duke of *Beaufort*, and other Persons of Distinction. 4. The Archbishop of *York*'s Letter to Dr. *Radcliffe*, concerning Dr. *Sacheverell*. 5. Dr. *Radcliffe*'s Letter to Dr. *Mead*, after the *Queen*'s Death. 6. A True Copy of his Last Will and Testament. *Stitch'd* 2 s. *Bound* 2 s. 6 d.

36. Memoirs of the Life of the most Noble *Thomas*, late Marquis of *Wharton*: With all his *Speeches* in Parliament, both in *England* and *Ireland*. To which is added, His Lordship's Character, by Sir *Richard Steele*. 1 *s*. 6 *d*.

37. Mr. *William Lilly*'s History of his Life and Times, from the Year 1602, to 1681: Written by himself in the 66th Year of his Age, to his Worthy Friend *Elias Ashmole*, Esq;. Publish'd from the Original Manuscript. Containing, among many Curious Particulars, 1. An Account of Dr. *Forman*, Dr. *Napier*, Dr. *Booker*, Dr. *Dee*, *Kelly*, and all other Astrologers and Conjurers, his Cotemporaries: Unfolding the Mysteries of the *Black Art*; *viz*. Incantations, Raising of *Spirits*, &c. 2. The Trial of *Isaac Antrobus*, Parson of *Egremond*, before Sir *Harbottle Grimston*, Master of the *Rolls*, for Baptizing a Cock by the Name of *Peter*, and committing Adultery with a Woman and her Daughter. 3. A Discovery of several Private Transactions, relating to *Oliver Cromwell*'s Management, during the Time of the Civil Wars; more especially that Grand Secret, *Who the Person was, that cut off King* Charles's *Head*. 4. Mr. *Lilly*'s Examination before the *Parliament*, concerning the Fire of *London*; with some Memorable Occurrences, that happen'd after the Restoration of King *Charles* II. 1 *s*. 6 *d*.

38. Mr.

38. Mr. *William Lilly*'s True History of King *James* I. and King *Charles* I. With sundry Observations, Remarkable Passages, and many Secret Transactions not till now divulged. Faithfully publish'd from his own Copy. Containing, 1. An Account of K. *James*'s being poison'd by the Duke of *Buckingham*'s Mother. 2. The Precipitate Measures taken by K. *Charles* at his coming to the Crown; and of his Assisting the *French* to destroy the *Rochellers*. 3. The Duke of *Buckingham*'s Unfortunate Expedition to the Isle of *Rhee*, in *France*: His Character; and a full Relation of that amazing Apparition which foretold his Death. 4. The Characters of Archbishop *Laud*, Bishop *Wren*, General *Fairfax*, the Earl of *Arundel*, the Earl of *Strafford*, the Earl of *Essex*, &c. 5. An Account of the *Irish* Massacre; the King's Execution: A farther Account of the Person who beheaded him; and of his private Interment at *Windsor*. 6. Several Prophecies, foretelling his untimely Fate. *Stitch'd* 1 *s.* 6 *d. Bound* 2 *s.*

39. A True Account of a Conference held at a *Quakers* Meeting-House in *Suffolk*, with *Joseph Middleton* of *Hempton-Abbey* in *Norfolk*, Speaker: Together with some Remarks thereupon. By *Henry Stebbing*, M. A. Rector of *Rickinghall Inferior*, and late Fellow of St. *Catherine*'s-Hall in *Cambridge*. 1 *s.*

40. The Charge of *Heresy* continu'd: In a Second Defence of the Divine Institution of *Water-Baptism*. Being a full Reply to a Book of the *Quakers*, entitled, *Christian Baptism vindicated from the Principal Objections of* Henry Stebbing, *Rector of* Rickinghall *in* Suffolk, *in his Printed Account of a Conference there*; and publish'd by *George Gibson*. Wherein also some Gross and Fundamental Errors of *Robert Barclay*, not hitherto animadverted upon, are censur'd and exposed. By *Henry Stebbing*, M. A. late Fellow of St. *Catherine*'s-Hall in *Cambridge*. 1 *s*,